Calumet City
And
Illinois Fraternal Order of Police Labor Council

S-MA-99-128

Steven Briggs

October 12, 2000

BACKGROUND

The City of Calumet City (the City) is a home rule municipality of 37,840 residents in Cook County, Illinois. Its Police Department employs 77 sworn personnel, approximately 75 of whom are represented for collective bargaining purposes by the Illinois Fraternal Order of Police Labor Council (the Union). The bargaining unit consists of all sworn police officers in the ranks of Captain, Lieutenant, Sergeant, and Patrol Officer; it excludes the Chief of Police and Assistant Chief of Police.[1]

The City has collective bargaining relationships with three other employee groups as well. Its Fire Department employees are represented by the Calumet City Professional Firefighters Association, an affiliate of the International Association of Firefighters (IAFF).[2] Certain employees of the City's Street & Alley and its Water Departments are represented by Teamsters Local 142. The City's full-time and regular part-time clerks, its telecommunicators, its communication supervisor and its supervisor of records are represented for collective bargaining purposes by Teamsters Local 726.[3]

The most recent collective bargaining agreement between the parties to this dispute became effective May 1, 1996 and expired April 30, 1999. The first negotiation session for its successor took place in mid-February, 1999. At that initial session the parties exchanged written proposals. Subsequent bargaining sessions were held on February 23 and May 21, 1999. Pursuant to its rights under the Illinois Public Labor Relations Act (the Act), the Union invoked mediation. A mediation session on August 30, 1999 did not produce a settlement. The Union then filed a demand for interest arbitration with the Illinois State Labor Relations Board.

The parties mutually appointed Steven Briggs to serve as Neutral Chair of a tripartite Arbitration Panel. The Union appointed David Wickster as its delegate to the Panel; the City appointed Martin P. Marta, Esq. as its delegate. Interest arbitration hearings were held on February 1 and 3, 2000, during which time both parties were afforded full opportunity to present evidence and argument in support of their respective positions. The parties exchanged what were characterized as their "final offers" at the outset of the February 1, 2000 hearing. The hearings were transcribed. The parties' post-hearing briefs were received by the Neutral Chair on June 15, 2000. On August 15, 2000 the parties graciously granted the Neutral Chair's request for a two-week extension of the date by which this Opinion and Award would be written. It was completed and mailed to the two party-appointed members of the Arbitration Panel on August 23, 2000, under the bold heading "**DRAFT – NOT FOR CIRCULATION**." The Arbitration Panel subsequently convened via telephone conference on October 5, 2000, at which time the Neutral Chair received comments from the other two Panelists about various issues. This Opinion and Award took those comments into consideration.

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[1] Throughout this Opinion and Award the phrase "Calumet City police officers" or simply "police officers" is often used as a matter of convenience to reference all members of the FOP bargaining unit there.

[2] Excluded from the bargaining unit are the Fire Chief, the Deputy Chief, and one Assistant Chief.

[3] Excluded from this bargaining unit are employees in the Cultural Center, the Police and Fire Commission, part-time employees in the Building Department, and counselors in Youth & Family Services.

RELEVANT STATUTORY PROVISIONS

Section 14(g) of the Act provides in pertinent part:

> As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h). The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in subsection (h).

Section 14(h) of the Act sets forth the following interest arbitration criteria:

> Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and the wage rates or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:
>
> (1) The lawful authority of the employer.
>
> (2) Stipulations of the parties.
>
> (3) The interest and welfare of the public and the financial ability of the unit of government to meet those costs.
>
> (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
>
> (a) In public employment in comparable communities.
>
> (b) In private employment in comparable communities.
>
> (5) The average consumer prices for goods and services, commonly known as the cost of living.
>
> (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
>
> (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

THE ISSUES

The parties have advanced the following 17 issues to interest arbitration, and have stipulated that each is economic or non-economic as indicated parenthetically:[4]

(1) Article VII – Employee Rights (non-economic)

(2) Article IX – Grievance Procedure (economic)

(3) Article X – Council Representatives (disputed)[5]

(4) Article XI – Seniority (non-economic)

(5) Article XIII – Hours and Overtime (economic)

(6) Article XV – Call Back and Court Time (economic)

(7) Article XVIII – Reserve Police Officers (non-economic)

(8) Article XX – Officers' Leave (economic)

(9) Article XXI – Bonus Days (economic)

(10) Article XXIII – Vacations (non-economic)

(11) Article XXIV – Holidays (economic)

(12) Article XXV – Wage Rates (economic)

(13) Article XXVII – Insurance (economic)

(14) Article XXVIII – Light Duty (economic)

[4] During these proceedings the City dropped its proposal to amend Article I (Recognition), and both parties made the same proposal (i.e., no change) with regard to Article III (Dues and Fair Share). Accordingly, those issues are not before the Arbitration Panel for resolution. Also, though Article XXVI (Longevity) was at one time the subject of dispute between the parties, neither of them advanced a final offer on that issue in these proceedings. The Arbitration Panel therefore asserts no jurisdiction over it.

[5] The Union argues that this is an economic issue; the City disagrees.

(15) Article XXIX – Clothing Allowance (economic)

(16) Article XXXI – Residency (non-economic)

(17) Article XXXIV – Duration (economic)

THE DECISION PROCESS

The following pages attempt to summarize the parties' final offers on the issues, to set forth their principal arguments with respect to those offers, and to explain the Neutral Chair's perspective. The ultimate positions arrived at by the Neutral Chair on each issue were formed on the basis of full and fair consideration of both parties' offers and their accompanying arguments. They were based upon detailed study of the voluminous arbitration record, which consisted of literally thousands of printed pages. Moreover, the Neutral Chair's ultimate conclusions stemmed from the aforementioned statutory criteria. It is important to recognize, though, that the statute does not specify the weight to be attached to each criterion. Thus, on an issue-by-issue basis interest arbitrators have the authority to stress certain criteria and place less emphasis on others, depending on the particular circumstances under consideration. For example, when the cost-of-living is whole percentage points beneath both parties' wage offers, that criterion becomes less meaningful than it might otherwise be. And the parties do the same thing at the bargaining table. They rely on various considerations, in varying degrees, as they hammer out voluntary collective bargaining agreements. The person expecting every consideration to be employed and weighted equally on all issues at the bargaining table, and every statutory criterion to be employed and weighted equally on all issues in the interest arbitration process, is living in a fantasy world.

THE EXTERNAL COMPARABLES

Union Position

The Union used the following selection criteria to identify what it considers to be comparable communities: (1) geographical proximity (within 20 miles of Calumet City)[6]; (2) population (+/- 50% that of Calumet City); (3) median home value (+/- 50% that of Calumet City); (4) median household income (+/- 50% that of Calumet City); (5) equalized assessed valuation (+/- 50% that of Calumet City); total local tax revenue (+/- 50% that of Calumet City); public safety expenditures (+/- 50% that of Calumet City); and police department size (number of full-time sworn officers).

[6] The only exception is Berwyn, the bulk of which lies just outside a 20-mile radius.

On the basis of the foregoing criteria, the Union constructed the following comparability grouping:

Alsip
Berwyn
Burbank
Chicago Heights
Dolton
Evergreen Park
Harvey
Lansing
Oak Forest
Oak Lawn
Orland Park
Park Forest
South Holland
Tinley Park

City Position

The City chose certain "Northern Illinois communities" for inclusion in its comparables pool. It asserts that their selection was based upon these criteria: (1) population (+/- 50% that of Calumet City)[7]; (2) department size (+/- 50% that of Calumet City)[8]; (3) starting patrol pay; (4) high patrol pay; (5) median family income; (6) equalized assessed valuation; and (7) median home sale price. On the basis of those factors the City identified the following municipalities as being comparable to Calumet City for the purposes of these proceedings:

Chicago Heights
Dolton
Evergreen Park
Glendale Heights
Hanover Park
Harvey
Lansing
Naperville
Oak Forest
South Holland
St. Charles
Tinley Park
Villa Park
Woodridge

[7] Naperville, being more than three times the size of Calumet City, is an obvious exception.
[8] Again, since Naperville employs approximately 170 patrol officers, it is an exception to the City's general department size criterion.

Discussion

The identification of external comparables in proceedings such as these is designed to help interest arbitrators reconstruct the context within which the parties negotiate their own contracts. Municipalities look to the wages, hours and working conditions offered by others in order to ensure that the employment packages they provide in their own jurisdictions are sufficient to attract and retain qualified employees. Similarly, unions make such comparisons in order to protect the rights and interests of those whom they represent. Since interest arbitration is supposed to produce a result akin to what reasonable parties themselves would have hammered out in free collective bargaining, it makes sense for interest arbitrators to consider external comparables as well --- the same comparables the parties themselves would likely have used, had they been able to agree on a list of them.

In the present case the parties agree that the following communities are comparable to Calumet City:

Chicago Heights
Dolton
Evergreen Park
Harvey
Lansing
Oak Forest
South Holland
Tinley Park

Since both parties have embraced the jurisdictions in the foregoing list as comparables, the Neutral Chair adopts them as well. Turning to the remaining communities in the parties' proposed lists, it is important to underscore the importance of selecting as comparable only those in Calumet City's local labor market. The assumption here is that even if wages and benefits in another city looked attractive to police officers here, unless the differences were drastic they would most likely not be willing to pull up stakes and move to take jobs there. Put another way, the labor supply is not perfectly mobile. Employees are not inclined to leave one job for another if it means changing residences, taking the kids out of school, changing churches, doctors, etc. Accordingly, it is not realistic to use as comparables in interest arbitration municipalities so far removed from the focal city that its employees would most likely have to move their households to work there.

On the basis of the above analysis the Neutral Chair rejects as comparables Glendale Heights, Hanover Park, St. Charles, Naperville, Villa Park and Woodridge. They are far removed from Calumet City, and there is insufficient evidence in the record to suggest that they compete with Calumet City for police officers.[9] The remaining proposed

[9] Glendale Heights is about 35 miles away; Hanover Park is about 43 miles distant; Naperville is around 35 miles away; St. Charles is located about 45 miles away; Villa Park is approximately 30 miles distant; and Woodridge is about 29 miles from Calumet City.

comparables (Alsip, Berwyn, Burbank, Oak Lawn, Orland Park, and Park Forest) are situated within a 20-mile radius of Calumet City.[10] The Neutral Chair is reasonably satisfied, therefore, that they meet the local labor market test. To be sure, there is no precise way to define the boundaries of a local labor market, but using a 20-mile radius as a guideline is certainly one reasonable way to do so.

Alsip, Berwyn, Burbank, Oak Lawn, Orland Park and Park Forest also meet other conventional benchmarks of comparability. They are within +/- 50% of Calumet City's population,[11] and within +/- 50% of its median home value. On the bases of median household income and equalized assessed valuation, however, Oak Lawn and Orland Park are well outside that range. They extend beyond the range in terms of equalized assessed value as well. Accordingly, the Neutral Chair rejects Oak Lawn and Orland Park for comparability purposes. Again, there is nothing magic about a +/- 50% benchmark. One could reasonably argue that +/- 40% is equally valid as a measure of comparability. In these proceedings both parties referenced a range of +/- 50% for juxtaposing other municipalities against Calumet City on various characteristics of comparison. That suggests they would likely have done so in selecting (and perhaps agreeing upon) comparable jurisdictions during the negotiation process. The Neutral Chair is therefore comfortable adopting that range as well.

On the basis of the foregoing analysis, the Neutral Chair adopts the following municipalities as the comparability pool for these proceedings:[12]

Alsip
Berwyn
Burbank
Chicago Heights
Dolton
Evergreen Park
Harvey
Lansing
Oak Forest
Park Forest
South Holland
Tinley Park

[10] The southeast corner of Berwyn falls within 20 miles of Calumet City.
[11] Alsip, at a population of 18,227 is slightly below the 50% criterion (n = 18,920). However, an exception is made to the general size (population) criterion due to its geographic proximity (11 miles) to Calumet City.
[12] The number of full-time police officers is another conventional measure of size for comparability purposes. All of the comparables adopted by the Neutral Chair fall well within the =/- 50% range on that dimension as well.

ARTICLE VII – EMPLOYEE RIGHTS

Current Language

Article VII currently reads as follows:

EMPLOYEE RIGHTS

A. Bill of Rights

The Employer agrees to adhere to the provisions and protection provided to members covered under Illinois Compiled Statutes 50 ILCS 725/1 et. seq. or more commonly referred to as the Uniform Peace Officers' Disciplinary Act.

B. Discipline

Employees shall be disciplined for just cause. Disciplinary actions shall be handled as follows:

1. Discipline, including a suspension of five (5) days or less, shall be subject to the grievance and arbitration procedure.

2. Any disciplinary action that would require suspension in excess of five (5) days or discharge shall be subject to the rules and regulations of the Police and Fire Commission. An employee so affected may not utilize the grievance procedure relative to discipline in excess of five (5) days and must appeal to the Police and Fire Commission.

3. The parties expressly recognize that any discipline over five (5) days is subject only to the Police and Fire Commission's Rules and Regulations.

C. Inspection of Personnel Files

The Employer's personnel files and disciplinary history files relating to any employee shall be open and available for inspection by the affected employee, or his authorized representative, during regular business hours. Investigative files which relate to ongoing investigations shall not be available for inspection until after the investigation has been completed or the adjudication of related charges, whichever is later. The Employer further agrees to abide by the "Personnel Records Review Act," 820 ILCS 40/1 et. seq.

Union Position

Section A – "Weingarten Rights." The Union proposes the addition of the following sentence to Article VII, Section A:

> The foregoing shall not limit the employees' right to union representation under the Illinois Public Labor Relations Act, commonly known as "Weingarten" rights.

The Union believes the above language is necessary to correct an injustice set forth by the Illinois Supreme Court in Ehlers v. Jackson County Merit Commission.[13] In that case the Court found that a union had waived employees' right to union representation in disciplinary questioning by referencing their rights under the Peace Officers' Disciplinary Act.[14] The Union's proposal here is to confirm what it believes was a right Calumet City police officers had before Ehlers --- the right to union representation during investigatory interviews that could lead to discipline.

Though the City has advanced its own proposal regarding "Weingarten" rights, the Union believes it is tainted with ambiguous and superfluous language. Since its own proposal is more straightforward, the Union asserts, it should be adopted.

Section B – Discipline. The Union proposes several changes to Section B. It would change §B2 to give employees discharged or suspended for more than five days the choice of appealing either to the Board of Fire and Police Commissioners (the Board) or to the grievance and arbitration procedure. Under the proposal such employees would be required, prior to a hearing on the merits before either the Board or an arbitrator, to elect one forum or the other by irrevocable written notice. Since arbitration is already available for discipline up to and including five-day suspensions, the Union notes, making it available for more severe disciplinary action is not such a bold step. The Union also feels that arbitrators are more neutral than Board members, who are "appointed by the same politicians who orchestrate the suspension and termination of the officers seeking neutral review."[15]

The Union's final offer would remove the current §B3 and replace it with language requiring the City to "investigate and conclude investigations of potential disciplinary matters in a reasonable amount of time given the circumstances of the matter under investigation." The offer would also require the City to notify employees when a complaint has been made against them, and when an investigation is to be conducted --- criminal investigations excepted. The Union believes there is compelling need for such language, particularly since it took several years for the City to process and conclude its investigations into alleged violations of the residency requirement.

[13] Ehlers v. Jackson County Merit Commission, No. 83949, March, 1998.
[14] 50 ILCS 725/1, et. seq.
[15] Union's post hearing brief, p. 21.

The Union would also added to Article VII a new §B4, which would require the City to remove written reprimands from employees' personnel and disciplinary history files after one year from their date of issuance. Suspension notices would be removed after three years from the date they were issued. Such removal would not take place, though, where the employee is subsequently reprimanded and/or suspended for the same or substantially similar violations within the applicable period of years (i.e., one or three).

The Union is also suspect of the City's proposal to delay the progress of investigations until written transcripts of investigatory interviews with employees have been prepared. It alleges that the City could somehow drag out an administrative investigation under such language by influencing the date the transcript is issued.

City Position

Section A – "Weingarten Rights." The City also proposes language confirming employees' right to union representation during investigatory interviews that might lead to discipline. It believes its proposal does so in positive fashion, and characterizes the Union's offer as being stated negatively. The City also believes the Union's offer seems to identify the Illinois Labor Relations Act as "Weingarten." For those reasons, the City urges the Arbitration Panel to adopt its proposed language for Article VII, Section A.

Section B – Discipline – The City proposes no change to this provision. It asserts that the Union's bid for a choice between appeals to arbitration or the Board raises significant legal considerations. For example, the City opines, if its residency requirement were to remain unchanged in these proceedings, a police offer discharged for violating it could appeal to arbitration and quite possibly alter or eliminate the requirement that officers must live within City limits.

The City also asserts that §10-2.1-17 of the Illinois Municipal Code grants to the Board of Fire and Police Commissioners the "exclusive power" to hear cases of police officer discharges and suspensions of up to thirty days. The City notes as well that the Section provides appeal rights from Board decisions through the Administrative Review Act.

At a very basic level, the City argues, this issue revolves around the question of whether it will be governed by the wisdom of the people elected by its citizens or by the wisdom of a panel of arbitrators not answerable to those citizens. The City urges the Arbitration Panel to respect that principle.

In the City's view, the practical effect of adopting the Union's final offer would be to substitute arbitration for the Board's procedures. That is quite clear, the City argues, from the Union's allegations that the Board is biased. Moreover, the City believes that if employees are given a choice between Board procedures and arbitration, they will most likely never choose the former.

The City also argues that the Board's disciplinary review procedures work well, and that the Union has presented no compelling need to change them. The appointment of Board members by the Mayor and the City Council does not mean that they are inherently biased, notes the City. It points to our legal history as evidence, arguing that political appointees to judicial positions often apply their knowledge, wisdom and experience to make correct decisions --- not decisions that seem to favor the persons or parties who appointed them.

The City relies on the external comparables in support of maintaining the status quo on this issue, noting that the majority of their police contracts explicitly state that nothing limits the authority of the Police Board. Moreover, the City asserts, the parties to the police contract in Calumet City have twice included provisions that underscore the Board's exclusive authority to discharge.

Turning to the Union's proposal limiting investigation time, the City believes there are overwhelming reasons for rejecting it: (1) there has been no showing that a change in the status quo is necessary; (2) quick investigations are not necessarily better ones --- accuracy and justice should prevail over speed; (3) inserting the "reasonable amount of time" standard is not particularly applicable to police investigations, because it would require arbitrators and Police Board Commissioners to second-guess professional police department investigators; (4) the insertion of a time limit for concluding investigations establishes a procedural hurdle not appropriate in all cases; and (5) not one of the Union's comparable communities puts time limits on employer investigations.

The City also underscores the merit of its own proposal allowing the Chief or his designee to refrain from imposing discipline until a transcript of the disciplinary hearing has been received. Adoption of that proposal, the City argues, would enhance their ability to make good disciplinary decisions.

The City believes it is important to keep a full and accurate record of employees' history --- both good and bad --- to ensure consistent treatment of its employees. Such information might someday be relevant to EEOC or court proceedings, it might help determine which employees may need additional training, or it might be in the interest of public safety. The City further argues that employees are protected from some of the effects of old discipline anyway, because third-party decision makers routinely hold that sufficient passage of time renders prior discipline too "stale" to be used as stepping stones for subsequent (and more severe) disciplinary action. Finally, the City asserts that the external comparables do not support adoption of the Union's final offer concerning the expunging of prior disciplinary events.

Discussion

Section A – Bill of Rights. Both parties wish to confirm with their proposals that police officers in Calumet City have "Weingarten" rights to Union representation. The Neutral Chair does not find the Union's proposed language to be "negative," as the City asserts, though it does seem a bit awkwardly worded. As the City notes, placement of the phrase "commonly known as 'Weingarten' rights" in the Union's proposal seems to equate such rights with "the Illinois Public Labor Relations Act." The City's proposed provision is even less clear, as it does not definitively confirm the existence of "Weingarten" rights for police officers. Rather, it speaks of "the City's intention" to make them available.

Since both parties reportedly want a contractual confirmation of employees' "Weingarten" rights, and since each of their final offers on this non-economic issue contains language which might be confusing or even misleading to the reader, the Neutral Chair has constructed and hereby adopts the following contractual provision on this issue as an addition to Article VII, Section A:

> The parties agree that the foregoing shall not limit employees' "Weingarten" rights to union representation under the Illinois Public Labor Relations Act.

Section B(2) - Arbitration. As confirmed by the Appellate Court of Illinois,[16] home rule communities such as Calumet City have the power to enter into collective bargaining agreements which allow submission of discipline or termination matters to grievance arbitration, even though a previously adopted city ordinance may have vested a board of fire and police commissioners with the exclusive authority to hear and decide such cases.[17] Thus, the Neutral Chair concludes that adoption of the Union's final offer on this issue would not be repugnant to the City's lawful authority.

The Neutral Chair notes as well that Section 8 of the Act mandates that collective bargaining agreements "shall contain a grievance resolution procedure" and that such procedure shall provide for final and binding arbitration of "disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise." Nothing in the Act suggests that in adopting such sweeping language the legislature meant to exclude disciplinary matters. Indeed, given the significance of employee discipline to both unions and municipal employers, had the legislature meant to exclude it from arbitration it surely would have said so. But no such exclusion appears in Section 8. That provision simply and straightforwardly mandates that unless the parties agree otherwise, their collective bargaining agreements shall contain a grievance procedure

[16] Illinois Fraternal Order of Police Labor Council v. Town of Cicero, Illinois and the Board of Fire, Police and Public Safety Commissioners, Town of Cicero, 234 Ill.Dec. 698, 703 N.E.2d 559 (Ill. App. 1 Dist. 1998).

[17] The Neutral Chair relies upon Cicero, which distinguishes home rule communities from non-home rule units, and which arguably focuses more squarely to the point of this dispute than does the Court's earlier decision involving the Village of Worth (Parisi v. Jenkins, 236 Ill. App. 3d 42, 603 N.E. 2d (First Dist., Sixth Div. 1992).

which includes final and binding arbitration for disputes about how those agreements are administered and interpreted.

Article VII, §B of the parties' current Agreement begins with the sentence: "Employees shall be disciplined for just cause." Neither party proposed a change to that language. Thus, the meaning of the phrase "just cause" falls within the scope of the phrase: "disputes concerning the administration or interpretation of the agreement." When the City suspends or discharges a police officer, it interprets the phrase "just cause" and administers the Agreement according to that interpretation. The Neutral Chair therefore concludes that the arbitration of discharge and lengthy suspension cases is mandated by the Act, unless the parties mutually agree otherwise.

The Union here "mutually agreed otherwise" in previous collective bargaining agreements when it accepted the language currently contained in Article VII, Sections B2 and B3. The Union no longer agrees that the Board should have the exclusive authority to hear and decide discharge cases and suspensions of greater than five days. The Neutral Chair concludes, then, that under the present circumstances the Act mandates arbitration as the means for resolving disputes concerning the "administration or interpretation of" the parties' collective bargaining agreement.

Aside from the legal questions, the Arbitration Panel should consider whether the current system for deciding discharge and lengthy suspension cases has been effective.[18] Certainly, the fairness of its decisions and whether they have been sustained or overturned on appeal are valid criteria for making such a determination. The parties disagree diametrically as to whether the Board of Fire and Police Commissioners in Calumet City has produced fair and equitable discharge decisions in the past. Such disputes are fairly common in almost every dispute resolution forum. But in the recent past a jury has overturned three of the Calumet City Board of Fire and Police Commissioners' discharge decisions.[19] That statistic calls its impartiality into question. Regardless of how one views the Board's impartiality or lack thereof, it is generally agreed among dispute resolution professionals that a decision-making body appointed unilaterally by one party to a dispute is less likely to have a neutral perspective than one mutually selected by both parties.[20]

The City also expressed concern about the arbitration of discharge cases relating to the current residency requirement. Allowing grievance arbitrators to hear and decide such

[18] Such consideration falls well within statutory criterion No. 8, requiring the Arbitration Panel to take into account "other factors" normally relied upon to determine wages, hours and conditions of employment through voluntary collective bargaining. The effectiveness and fairness of employee dispute resolution mechanisms, whether they be grievance procedures or not, is a topic routinely discussed in contract negotiations.

[19] Several other police officers were fired for the same reason; they accepted conditional reinstatement agreements and did not challenge the Board's discharge decisions.

[20] That principle is included in the *Due Process Protocol*, a treatise endorsed by the American Arbitration Association, the Labor and Employment Section of the American Bar Association, the American Civil Liberties Union, the Federal Mediation and Conciliation Service, the National Academy of Arbitrators, and the Society of Professionals in Dispute Resolution.

cases, the City argues, would give them license to amend the residency requirement itself. The Neutral Chair disagrees. Article IX, Section D of the Agreement, which neither party wishes to change in these proceedings, specifically indicates that grievance arbitrators "shall have no right to amend, modify, nullify, ignore, add to, or subtract from" the Agreement's provisions. Thus, even under the Union's final offer no grievance arbitrator would have the authority to modify any Agreement provision --- including one containing a residency requirement.

Another favorable aspect of the Union's final offer on this question is that it provides employees most affected (i.e., discharged or suspended police officers) with a choice. Those having confidence in the fairness of the Board could select that avenue for adjudication; those feeling comfortable with a more independent decision maker (i.e., one with no connection whatsoever to either party)[21] could opt for arbitration. The Union's final offer here is simply more democratic, in that it gives employees some say in decisions that will have a significant effect on them. If they consistently choose one forum over another, it is reasonable to conclude that the one not selected may appear flawed to the very people whose income and jobs hang in the balance.

Furthermore, the Neutral Chair is not persuaded by the City's argument that giving discharged or suspended police officers the right to arbitration would somehow deprive the public of what it sought in electing City officials. If that were the case, the City of Calumet City certainly would not have agreed to process through its Fire Department's grievance procedure (which includes binding arbitration) "any disciplinary action (or) measure imposed upon an individual employee covered by this Agreement . . ."[22] Moreover, if arbitration were somehow repugnant to the public interest the City would not have agreed to arbitrate reprimands and suspensions of five days or less in the Police Department either.

The City is correct in its assertion that the external comparables do not support adoption of the Union's final offer on this matter. Only one of the twelve comparable communities (Oak Forest) permits its police officers to opt for arbitration of disciplinary matters. But the record developed in these proceedings suggests that there have been extraordinary circumstances in Calumet City which call for a change from the status quo. Board discharge decisions overturned in the courts have resulted in significant financial penalties to the City --- all at the taxpayers' expense. Indeed, the significant cost to the City of defending itself in those proceedings was also shouldered by Calumet City taxpayers. As noted by the City itself, a statutory appeal mechanism exists to overturn Board decisions on a fairly broad basis (e.g., the appellant merely thinks the Board made the "wrong" decision). In contrast, grounds for appeal of arbitration decisions to the courts are severely restricted. Under those circumstances the City and its taxpayers might

[21] Members of the three-person City of Calumet Board of Fire and Police Commissioners are considered officers of the City pursuant to 65 ILCS 5/10-2.1-3.

[22] May 1, 1999 to April 30, 2003 Labor Agreement between the City of Calumet City and the Calumet City Professional Firefighters Association, Local 621 of the International Association of Firefighters, Article XXI (Disciplinary Action), p. 38.

actually save legal costs were police officers to opt for arbitration instead of hearings before the Board.

On the basis of the foregoing analysis, the Neutral Chair concludes that the Union's final offer with respect to arbitrating discharge and lengthy suspension matters is justified. It is hereby adopted as Article VII, Section B2 of the parties' collective bargaining agreement.

Section B(3) – Investigations. Especially with regard to the residency question, the parties have an intense history of disagreement as to the timeliness of investigations. The Union alleges, for example, that for years the Mayor and the Chief knew certain officers were living outside Calumet City limits, yet simply turned their heads the other way. The Union further charges that when political tides changed and the Mayor wanted to punish certain officers for not supporting his re-election, he caused residency violation charges to come crashing down on those officers suddenly and unpredictably. Thus, the Union believes, there is compelling need for contract language requiring timely investigations. Without regard for whether the Union's allegations are well-founded, it is clear from the record that Agreement language spelling out a few basic due process tenets might help the parties advance toward a more trusting relationship. Indeed, accomplishing that objective would be in their best interest and that of the public as well.

Both parties' proposals on the investigation question seem to be appropriate in certain respects. Certainly, no employer should be allowed to take more than a "reasonable" amount of time to conduct disciplinary investigations. Even the City acknowledges here that it would be "uncomfortable for an employee to be sitting on edge waiting the outcome of an investigation."[23] The City argues that it is better to conduct investigations properly and thoroughly than it is to complete them quickly. The Neutral Chair agrees. But the accuracy and thoroughness of an investigation are both elements of what is considered when determining whether it has been completed in a reasonable time. No person of sound mind could possibly argue that complex investigations should be completed in the same amount of time as more simple ones, for example. The Union's proposal embraces that concept, for it includes the notion that "the circumstances of the matter under investigation" affect the amount of time an investigation can reasonably take.

The City also acknowledges that "management could deliberately delay (an) investigation precisely for the purpose of making (an) employee uncomfortable."[24] Certainly no fair-minded individual would argue against preventing such an occurrence. But a disciplinary investigation might also be delayed due to legitimate organizational pressures. Often managers must prioritize the many demands for their time, and it is conceivable that a minor disciplinary matter might get temporarily pushed aside for other more pressing organizational issues. The Union's offer on this matter would not seem to preclude such temporary delays, for the definition of what is a "reasonable amount of time" varies with a myriad of circumstances. Given the flexibility built into the Union's proposed

[23] City's post hearing brief, p. 20.
[24] Ibid, p. 20.

language, and acknowledging as has the City the potential for abuse without some check-and-balance on inappropriate investigatory delays, the Neutral Chair concludes that the portion of the Union's proposal concerning timely investigations should be adopted and incorporated into the parties' collective bargaining agreement as Article VII, Section B(3).

The City has also proposed contract language with regard to disciplinary investigations. It seeks language permitting it to withhold disciplinary action until such time as a transcript of the disciplinary hearing has been received. That proposal seems reasonable, since it is presumably designed to help ensure that the Employer has an accurate record of the employee's perspective concerning pending disciplinary action. Moreover, it seems likely that during contract negotiations about disciplinary investigations the parties might have considered trading the Union's "reasonable time" proposal as a quid pro quo for the City's "transcript-in-hand" proposal.

Another aspect of the Union's proposal is potentially troublesome. While requiring an employer to notify employees of complaints and related investigations does not seem burdensome or inappropriate, there may be good reason for an employer to investigate certain non-criminal complaints before notifying an employee they have been received and an investigation is underway. For example, what if a citizen reported that several squad cars sat idly in a cocktail lounge parking lot for hours on end every Thursday afternoon? Under the Union's proposal the Employer might have an obligation to notify allegedly involved police officers of the complaint and inform them that an investigation had begun. Under such circumstances any related surveillance by the Employer might be compromised.[25] Without further information about the Union's intent behind that portion of its proposal, the Neutral Chair is reluctant to adopt it.

In summary, the Neutral Chair adopts the following language for inclusion into the parties' Agreement as Article VII, Section B(3):

> The Employer agrees to investigate and conclude investigations of potential disciplinary matters in a reasonable amount of time given the circumstances of the matter under investigation. In the event a disciplinary hearing takes place pursuant to Section A of this Article, the Employer may at its discretion refrain from disciplining affected bargaining unit employees until such time as it has received a transcript thereof.[26]

Section B(4) – Removal of Discipline. Both parties have advanced legitimate positions on this issue. The Union essentially asserts that it is unfair for the City to maintain records of disciplinary actions taken more than a few years prior. The City

[25] This hypothetical example is merely that --- it is not intended to reflect negatively on Calumet City police officers.

[26] The phrase "affected bargaining unit employees" was inserted in place of the City's proposed "any member of the bargaining unit" language because the latter category seemed too broadly defined.

counters with the argument that most third-party decision-makers ignore as "ancient history" disciplinary action followed by years of good conduct free of rule infractions, etc. The Neutral Chair finds the City's argument to be persuasive, particularly since under this Award Calumet City police officers will have the option of having discharge and lengthy suspension cases heard by experienced labor relations neutrals.

Furthermore, there is insufficient evidence in the record to indicate that the City has ever relied upon unreasonably dated disciplinary action in an inappropriate attempt to justify unduly harsh discipline for a current rule infraction. In other words, the Union has identified no compelling need to insert its §B(4) proposal into Article VII. The Union's proposal on this matter is further weakened when considered against the external comparables. Only two of them (Evergreen Park and Oak Forest) contain any such provisions. Furthermore, the Union did not call to the Panel's attention any such provision in other Calumet City collective bargaining agreements.

On balance, the Neutral Chair finds insufficient justification in the record to support adoption of the Union's proposal to add a new §B(4) to Article VII. It is hereby rejected.

ARTICLE IX – GRIEVANCE PROCEDURE

Current Language

Article IX, §C(6) reads:

> The fees and expenses of the arbitrator and the cost of a written transcript, if any, shall be divided equally between the City and the Council; provided, however, that each party shall be responsible for compensating its own representatives and witnesses.

City Position

The City proposes to add the following sentence to Article IX as a new §F:

> The party who fails to prevail in an arbitration proceeding shall be responsible for the opposing party's fees and costs.

As justification for its proposal the City asserts that the Union has consistently and repeatedly filed frivolous grievances. The City notes as well that out of six recent grievances that advanced to arbitration, the Union prevailed in only one. Moreover, the City argues, there is adequate precedent in Illinois to add "loser pays" language to the Agreement.

Union Position

The Union wishes to maintain the status quo on this issue. It argues that the City's proposal is inconsistent with the Act, which calls for the costs of arbitration to be borne equally by the parties (unless they agree otherwise). The Union also believes that adoption of a "loser pays" system would promote gamesmanship and strategic grievance processing, rather than the mutual dispute resolution efforts envisioned by the law and practiced in other Illinois jurisdictions.

Discussion

The record has not convinced the Neutral Chair that the Union has abused the grievance procedure by filing frivolous grievances. It is generally assumed in labor relations circles that a grievance rate of ten or less per hundred unit employees per year can be expected, and that anything more might suggest the existence of a distressed grievance procedure.[27] Here, while the City claims the Union has abused the grievance procedure by filing frivolous grievances, it presented no companion statistics to support that claim. And certainly, losing an arbitration case does not mean the grievance itself was frivolous.

The City also believes that a "loser pay" provision would discourage the Union from advancing frivolous grievances to arbitration for fear of depleting its financial resources. The current language already accomplishes that objective, though. Financial responsibility for half of an arbitrator's fees and expenses, for half of a transcript's cost, for their own attorney's fees, etc. are significant for both parties. Such obligations no doubt already provide the Union sufficient incentive to avoid arbitrating frivolous grievances. Moreover, they help induce both parties toward finding reasonable solutions to their contract-related disputes.

Turning to the external comparables, the Neutral Chair finds no support for the City's proposal. In all of them but Harvey, where no collective bargaining agreement exists, the parties split the cost and expense of arbitration. That arrangement is considered standard in municipal labor agreements generally, and in those across the private sector as well. It recognizes the principle that when both parties share the financial burdens of arbitration, whether they should win or lose, they each have incentive to minimize the rate at which grievances are filed and the extent to which they are advanced to arbitration.

On the basis of the foregoing analysis the Neutral Chair rejects the City's proposal to change the status quo on this issue.

[27] See Arthur Ross, "Distressed Grievance Procedures and Their Rehabilitation," in *Labor Arbitration and Industrial Change: Proceedings of the Sixteenth Annual Meeting of the National Academy of Arbitrators* (Washington, D.C.: Bureau of National Affairs, 1963), pp. 104-132. For an expanded discussion of municipal grievance rates, see Steven Briggs, *The Municipal Grievance Process* (Los Angeles: UCLA Institute of Industrial Relations, 1981), at p. 18.

ARTICLE X – COUNCIL REPRESENTATIVES

Current Language

A. Attendance at Lodge Meetings

Subject to the need for orderly scheduling and emergencies and further subject to no overtime being necessary, the Employer agrees that elected officials of the Board of Directors, up to a maximum of four (4) members, of the Lodge shall be permitted reasonable time off, without pay, to attend general, board of (sic) special meetings of the Lodge, provided that at least forty-eight (48) hours' notice of such meeting shall be given in writing to the Employer, and provided further that the names of all such officials and officers shall be certified in writing to the Employer. The Employer agrees to continue its current practice with respect to allowing members of the Lodge to attend local Lodge meetings while on duty.

B. Grievance Processing

Reasonable time while on duty shall be permitted to Lodge representatives for the purpose of aiding or assisting or otherwise representing officers in the handling and processing of grievances filed under this Agreement, and such reasonable time shall be without loss of pay.

C. Identification

(neither party advanced a proposal on this Section)

D. Council Leave

Up to three (3) employees elected to the State Lodge or State Council may, with the permission of the Chief of Police, be granted time off duty with no diminution of pay or fringe benefits for State Lodge or Council business. Such permission shall not be unreasonably withheld. Time off granted for such leave shall not be more than fifteen (15) days annually for said employee. Any three (3) employees elected to be representatives of the bargaining unit to the Labor Council shall each be granted time off from duty with no diminution of pay or fringe benefits for Labor Council business. Requests for time off shall be made in writing to the Chief of the Department and no request for time off shall exceed more than five (5) days annually for each employee. Such annual five (5) days allowed shall be during any calendar year (January 1 through December 31). Such permission for the above listed leave shall not be unreasonably withheld; however, where the Department can demonstrate that overtime will be required or is anticipated with certainty to be required, the Department may refuse to grant such leave during the timeframe requested. The

> refusal to grant such leave shall be subject to the grievance procedure and the only remedy for the failure to grant such leave shall be one (1) day's pay for each day in which the leave was denied improperly as determined by an arbitrator at the conclusion of the grievance procedure.

City Position

The City maintains that this issue is non-economic. It proposes to delete the last sentence of Section A (i.e., guaranteed continuance of the City's "current practice" with respect to allowing Union members to attend local Lodge meetings while on duty). According to the City, Lodge meetings could be held anywhere, including bars, and it would not be appropriate to allow on-duty officers to attend under such circumstances. Moreover, the City notes, on-duty employees should not be away from their work sites because they might not be able to respond to dispatch calls --- assuming they are even in range to receive them. The City is not opposed to paying for on-duty officers to attend Lodge meetings held at the police station, where they would be available to handle emergencies. The City claims as well that the external comparables do not support the latitude currently provided to Calumet City police officers in Article X, Section A. It asserts that the last sentence of the Section should be removed in order to provide the Employer with the legitimate control it deserves to have over employees while they are on duty and being paid.

In its proposal on Section B, the City seeks to limit to one the number of on-duty Union representatives assisting a grievant. It also seeks what it considers reasonable notice if a Labor Council representative is to be present at grievance handling meetings or administrative interviews of bargaining unit members. The City argues that such provisions are present across the external comparability grouping.

The City proposes no changes to Article X, Sections C and D. It advances the following proposal as a new §E:

> The City retains the right to utilize all City property and locations, including any room previously having been designated as F.O.P. meeting rooms, etc. Restrictions on space require the City to utilize all space in the certain location known as the Police Department Headquarters for City business.

According to the City, the above proposal merely confirms that historical use of Police Department rooms for Union business is not a binding past practice. It opines as well that the Union's proposal on this same topic uses different terminology to say essentially the same thing.

As part of its final offer on this issue the City also would include the following provision as a new §F:

> Members of the bargaining unit who have been declared representatives as provided in Section E above or those acting as officers or agents of the Fraternal Order of Police Labor Council who are employees of the City of Calumet City who are called to testify or act as witnesses or desire to assist in any private suit or claim related in any way to Lodge matters or Fraternal Order of Police matters or grievances, unless said matter relates directly to an active grievance, shall not be paid while acting as a witness in any private suit or claim. Time off to attend any matter determined to be a private matter, i.e., a matter in which the attendance of the officer is not requested by the City of Calumet City or the Calumet City Police Department as determined by the Chief of the Department, in his sole discretion, shall not be compensable by the City nor shall time off be granted by the Department.

The City notes that while the above proposal represents agreement with the Union's Section F proposal in several respects, the latter provides that officers may use accumulated leave to attend private suits or claims as a witness. That provision, argues the City, is inappropriate because it might cause the City to operate short-handed or to pay overtime. The City further asserts that if an officer were testifying against the City in such a proceeding, having to pay him to do so would be insulting.

Another element of the City's final offer for Article X is the addition of the following new language as Section G:

> Officers attending any activity while off-duty, unless specifically approved by the Chief or his designee, shall not be considered agents of the City of Calumet City or the Calumet City Police Department and as such may not attend such activity while in uniform. It is recognized that the uniform and indicia of police authority, while off-duty, shall be under the exclusive jurisdiction and control of the Calumet City Police Department.

The City also proposes the following new Section H, which relates to secondary employment:

> Secondary employment shall be subject to all rules and regulations and general orders of the Department. Notwithstanding such requirement, officers seeking secondary employment shall first obtain the permission of the Chief of the Department or his designee. Consistent with such rules and regulations and/or general orders of the Department, officers engaged in secondary employment for another public body, i.e., school district,

> library, parochial school or church benefit, or other appropriate non-commercial enterprise, may utilize the uniform and other indicia of Calumet City police authority.
>
> In the event the officer seeks secondary employment at a commercial enterprise to act as a security guard and/or other activity related around security and/or property protection or enforcement, the secondary employer shall provide a uniform and the officer may not utilize the Calumet City police officer (sic) and may only display his or her badge while exercising what would be normal off-duty police authority. The secondary employer shall provide proof of workmen's compensation coverage and acknowledge that the City of Calumet City Police Department is the officer's primary employer and further shall agree to indemnify and hold the City of Calumet City harmless from any and all claims that may arise, whether founded or unfounded, against the City of Calumet City, the City of Calumet City Police Department, its elected officials, employees, agents or consultants as to any matter alleged to have taken place while the officer is engaged in secondary employment for the commercial enterprise. Nothing contained herein is designed to interfere with the right of the officer to have secondary employment and the right to engage in secondary employment shall not be unreasonably withheld subject to the conditions provided and required herein.
>
> An officer's badge is an indicia of his authority as a police officer. Neither the badge nor any City equipment shall be utilized by the officer while engaged in secondary employment for a commercial enterprise without the express written consent of the Chief of Police.

The City believes that officers who work for private concerns while wearing the badge or other insignia of the City constitute a significant liability risk of concern to the City's liability carrier. It notes as well that there are similar provisions across the comparable communities, and urges the Panel to accept its proposal.

Union Position

The Union proposes no change to Article X, Section A. That is, it seeks to maintain the status quo with regard to the City's "current practice with respect to allowing members of the Lodge to attend local Lodge meetings while on duty."

The Union's proposal for Section B, like the City's, also limits to one the number of on-duty Union representatives who can be engaged in grievance processing at any one time. The Union's Section B offer also prohibits from acting as a grievance representative the shift commander who supervises the grievant. It differs somewhat from the City's final

offer in two respects: (1) it does not specify that the shift commander in such situations shall declare a conflict of interest and designate another bargaining unit member as the grievant's representative; and (2) it requires the Union to notify the Police Chief in writing as to which employees are the grievance processing representatives.

The Union proposes no changes to Article X, Sections C and D.

As for Section E, the Union's proposal prohibits the conduct of Union business or meetings on City property without the prior approval of the Chief or his designee. The Union's Section F proposal is also somewhat parallel to that of the City, though the Union believes it is appropriate to allow officers the use of accumulated leave for serving as a witness in private suits or claims, subject to the approval of the Chief or his designee. The Union's proposal also includes the provision that such approval "shall not be unreasonably denied."

The Union believes that the City's final offer with respect to new Sections G and H is unduly restrictive and presents safety hazards. Accordingly, the Union notes, its own offer addresses the City's concerns, yet does not compromise the safety of officers and the public. The Union's final offer on the secondary employment question is contained in a new Section G. It differs from the City's Sections G & H in the following respects: (1) it allows officers to carry departmental identification and badges during secondary employment for a commercial enterprise without obtaining, as required in the City's offer, the Chief's prior written consent; (2) it authorizes officers during their secondary employment to carry a department radio; (3) it does not require that commercial secondary employers provide uniforms; and (4) it specifically excludes from its indemnity language the City's responsibility with regard to "matters that arise out of the officer exercising normal off-duty police authority."

The Union believes that its proposals with regard to secondary employment insulate the City from liability, yet allow officers to engage in secondary employment. More importantly, the Union argues, it does so while protecting officer safety.

Discussion

The parties have characterized their many disputes under Article X as a single issue --- just one of the seventeen advanced to these interest arbitration proceedings for resolution. If indeed it is a non-economic issue, as the City maintains, the Arbitration Panel has the authority to adopt portions of each party's final offer, or even to substitute provisions of its own. On the other hand, if the Article X issue is economic, the Panel has only the authority to select the entire final offer of one party or the other. The Neutral Chair believes that this is an economic issue. Indeed, the City itself argues that adoption of the Union's Section G would make it susceptible to great financial liability. Moreover, allowing police officers to use department radios during secondary commercial employment would certainly increase the City's costs in terms of their repair,

maintenance and replacement. And the City itself argued that allowing officers to use accumulated leave for testifying in private suits might require it to pay them for testifying against the City's own interest. Given those circumstances, the economic nature of Article X is inescapable.

Advancing to the merits of the parties' respective arguments, the City wishes to change the status quo by removing the last sentence of Article X, Section A. Doing so would delete its contractual pledge to "continue its current practice" regarding the attendance at local Union meetings by on-duty officers. In order to achieve such a change from the status quo, the City must present a compelling need to do so. But in arguing for the deletion, the City did not reference any problems it has experienced under the current language. Rather, it projected what might happen in the future --- how the "current practice" might damage the department's image or compromise its emergency response time. Under such circumstances the Neutral Chair finds no compelling need to change the current Section A. That is especially true since the record in these proceedings does not contain a detailed description of the nature of the current practice with regard to the location, times, extent of officer involvement, etc. of local Union meetings. Without such evidence, and without specific examples of problems the "current practice" might have fostered, it would be inappropriate for the Arbitration Panel to implement the change sought by the City.

There is little difference in the parties' final offers concerning Article X, Section B. Both, for example, reduce the number of on-duty grievance representatives from three to one, and require the Union to give the Chief or his designee reasonable notice if a Labor Council attorney and/or representative intends to attend a grievance meeting or administrative interview. The parties' final offers specify slightly different approaches to be followed in the event a given shift commander also happens to be the designated grievance representative for a grievant whom he or she supervises. It seems evident from both parties' proposals that they share a concern about potential conflict of interest in such situations. That being a potential problem, it does not seem appropriate for such a shift commander to be the one to designate another bargaining unit member to serve as the grievant's representative. Under such a provision the conflict of interest might be exacerbated because the shift commander could simply select someone known to bear a grudge against that particular grievant. Moreover, the Union's proposal requires it to notify the Chief in writing with the names of the designated grievance representatives. The City's offer contains no such provision. Overall, the Neutral Chair is therefore reluctant to adopt the City's proposed language for this Section.

Turning to Section E, the Neutral Chair sees no practical difference in the parties' respective final offers. They both prohibit the Union from conducting business or holding meetings on City property without official permission in advance from the Chief.[28] Moreover, both proposals are clear enough to supersede any practice the parties may have had with respect to Union meetings on City premises without official advance

[28] The City's offer retains for itself "the right to utilize all City property and locations." It is reasonable to assume that under such language the Chief would have the authority to respond positively to Union requests to meet on City property for such purposes.

permission. Since both offers seem to address the City's expressed concerns, this element of Article X does not seem particularly significant.

The only difference between the parties' offers with regard to Article X, Section F concerns the Union's desire for officers to use accumulated leave for the purpose of testifying in private suits or claims. The Neutral Chair notes that under the Union's offer such leave could not be used for that purpose without the "approval of the Chief of Police or his designee." That language seems to focus on the City's fear of operating short-handed or of being forced to pay overtime when officers want to use accumulated leave under the circumstances described in the Union's proposal. The avoidance of staffing shortages and overtime costs are seemingly reasonable justification for denying an officer's request to use accumulated leave. Denying such requests simply because the City or Chief might disagree with the officer's testimony in private suits does not seem appropriate. So long as their absence does not create scheduling hardships or increased overtime costs for the department, officers should be able to use leave they have legitimately accumulated for any purpose they choose --- whether it is going to a White Sox game or testifying in a private court proceeding. The Neutral Chair therefore favors adoption of the Union's proposed Section F over that of the City's.

The parties' secondary employment proposals are also relatively similar. Both retain for the Chief the right to determine when Calumet City police officers can engage in secondary employment, for example. The Union's offer requires in addition that the Chief may not unreasonably withhold his permission for them to do so. Almost all managerial decisions under collective bargaining agreements are subject to the rule of reason, so the Union's demand for such consideration does not represent any sort of breakthrough. Both offers provide that officers may wear their City-issued uniforms when engaged in secondary employment for another public body. And while the City's final offer prohibits the wearing of those uniforms during private secondary employment, the Union's specifies that the Employer shall "in its sole discretion" determine the circumstances under which officers may wear their City-issued uniforms. In the experience of the Neutral Chair as a grievance arbitrator, the Union's final offer reserves to the Employer the absolute, unilateral authority to prohibit the wearing of such uniforms during private secondary employment. Thus, there is little if any practical difference between the offers on that specific question.

Both parties' offers allow officers working secondary employment to display their badges only while exercising what would be normal off-duty police authority. Both require commercial secondary employers to indemnify the City and hold it harmless from claims related to matters alleged to have taken place during the secondary employment. The Union's proposal excludes from that indemnification clause "matters that arise out of the officer exercising normal off-duty police authority." That exclusion seems reasonable, particularly since the City's offer also allows officers to display their official Calumet City Police Department badges under those circumstances. Once that badge is displayed and the officer declares himself or herself to be acting in an official police officer capacity, it seems reasonable to conclude that the full backing of the City should be engaged.

A significant difference between the parties' offers on Article X concerns the Union's proposal that off-duty officers be allowed to carry their department radios. That element of the Union's proposal seems squarely aimed at officer safety. It would enable them to report dangerous situations promptly, and to obtain backup if necessary. It seems to the Neutral Chair that the Union's proposal on this question has a direct and measurable impact on the public interest. For example, an off-duty officer working the security detail for, say, a movie theater, could use the radio to call an ambulance for a stricken patron. Without the radio report, an emergency response team might not be called until someone could get to a telephone. The Neutral Chair therefore concludes that the Union's demand with regard to radios is both reasonable and in the public interest.[29]

On balance, the Union's final offer on this economic issue seems more reasonable than does the City's offer. It is hereby adopted in its entirety.

ARTICLE XI – SENIORITY

Current Language

Article XI, Section B is quoted below:

> Vacation Scheduling
>
> Officers shall select the periods of their annual vacation on the basis of departmental-wide seniority within each shift. Further, within the investigation division, vacations will be selected by unit and shift based on seniority, i.e., an officer with ten (10) years of department seniority on the first shift with no other having more than ten (10) years of seniority shall select his/her vacation first on said shift. Vacation schedules may be adjusted to accommodate seasonal operations, significant revisions in organization, work assignments or the number of personnel in particular ranks.

Union Position

The Union proposes the addition of the following paragraph to the current language of §B:

> The Chief of Police or his designee shall take into consideration officers' seniority when making shift assignments so as to insure that officers reasonably may select their periods of vacation at times of their choosing,

[29] The Neutral Chair recognizes that under the City's offer the Chief of Police could give "express written consent" for an officer to carry a department radio during commercial secondary employment.

> subject to the provisions of this section regarding seniority based selection. Vacation selections shall not be required to commence on a particular day or run in consecutive seven day periods.

The Union believes that police officers should be able to take vacations on days of their own choosing, so long as doing so does not interfere with department operations. It also asserts that the Employer has lumped together on one shift those it considers the "bad boys," with the effect being a large number of senior officers with more earned vacation on one shift. Under its final offer, the Union asserts, the Chief would have the necessary discretion to schedule vacations in such a way that they would not compromise departmental operations. The Union also argues that forcing officers to start vacations on Mondays and take only seven-day increments, as the City proposes, would preclude them from being able to use their full vacation allotments.

City Position

The City's final offer on the vacation scheduling issue appears as part of its proposal for Article XXIII (Vacations). It is included here, because the issue of vacation scheduling appears in the current agreement as Article XI, §B. The City proposes the addition of the following sentence:

> All vacations must commence on Mondays and run in seven consecutive day periods.

The problem which prompted the Union's proposal, the City argues, occurred on only one shift. It is staffed with twelve officers who collectively have accrued 43 weeks of vacation. Since there are 52 weeks in a year, there should be ample time for the entire shift to use all vacation earned. The City argues that there is simply no evidence in the record to indicate that any officer on that shift has ever been denied vacation time. It asserts that any vacation scheduling problems that may have arisen were due to the inability of officers on a given shift to cooperate with each other in selecting vacation times. The City notes as well that Article IV (Management Rights) confirms the Chief's absolute right to assign vacation schedules.

The City further argues that since the Union wishes to change the status quo on this issue, it has the burden of proving a compelling need to do so. The City believes that no such showing has been made.

Discussion

On this non-economic issue the Panel has the authority to select the offer of one party or the other, to adopt some compromise between the two, or to fashion its own vacation scheduling provision. Having such wide latitude is sometimes welcome, particularly where neither of the parties' final offers seems supported by the record. That is the case here.

To be sure, the Union is correct in its assertion that one of the shifts (Shift C) seems to be composed of more high seniority officers than the other two. By virtue of their seniority, the officers on Shift A earn a total of 28 weeks vacation annually. Those on Shift B earn 28 weeks as well. But officers on Shift C, by virtue of their generally high seniority, are entitled to a total of 43 vacation weeks annually. It would obviously be more difficult to schedule Shift C earned vacations over the course of a year than it would to schedule those for Shift A and Shift B. But that conclusion falls short of convincing the Neutral Chair that there is compelling need to add to Article XI new language directing the Chief to consider seniority in making shift assignments. There may be sound organizational reason to assign experienced officers to a single shift; there may not be. Suffice it to say that the record is not convincing one way or another.

Nor is there adequate evidence in the record to demonstrate compelling need for what the City has proposed. Since police officers assigned to Shifts A, B and C do not work five days per week, Monday through Friday, and since the shifts rotate, the potential impact of being forced to start all vacations on Mondays could be significant indeed. That issue was not thoroughly discussed in these proceedings. Moreover, the Neutral Chair is not convinced from the record that the parties have even discussed it to any extent at the bargaining table.

Interest arbitration should not generate a change to the status quo unless the parties themselves have discussed the issue at length during free collective bargaining. If it were allowed to do so, interest arbitration might eventually replace what labor-management authorities mutually embrace as the essence of workplace governance in a collective bargaining relationship --- face-to-face, give-and-take negotiations between those who must live under the terms of the resulting contract.

For the aforementioned reasons, the Arbitration Panel rejects the final offers of both parties on this issue and retains the status quo. The language of Article XI, §B shall remain unchanged.

ARTICLE XIII – HOURS AND OVERTIME

Current Language

The current language of Article XIII, §F is quoted here:

> Compensatory Time
>
> Compensatory time may be paid in lieu of overtime payment if the employee agrees. Compensatory time will be calculated at the same rate as overtime pay. Overtime rate shall be computed on the basis of fifteen (15) minute segments. Compensatory time shall be granted at such times and in such time logs as are mutually agreed upon between the involved officer and the Chief of Police or the Assistant Chief. Permission to utilize compensatory time shall not be unreasonably denied.

City Position

The City wishes to change the status quo on this economic issue by convincing the Arbitration Panel to add the following paragraph to the current Article XIII, §F:

> Compensatory time is granted in lieu of overtime payment and is computed as provided herein on the basis of fifteen-minute segments. In order to obtain fifteen-minute segments, the officer seeking such overtime or a declaration of comp time shall remain to the fifteenth, thirtieth, forty-fifth or sixtieth minute of any segment. The determination to offer comp time or to make a cash payment in the normal course of payroll periods shall be in the sole discretion of the Department and/or City.

The City believes it should have the right, in its sole discretion, to require officers to accept compensatory time off in lieu of cash payments when they work overtime. In support of its claim that doing so would be legal, the City cites Christensen, et al. V. Harris County, et al.[30] The City further argues that had good-faith negotiations taken place over this issue, it could probably have been resolved by the parties themselves at the bargaining table.

The City asserts as well that its high overtime costs have a substantial impact on the "cash flow" of the general revenue fund. Overtime is not an expense that can be readily controlled or anticipated, the City argues, because the Department must cover officers' unplanned absences on an overtime basis in order to protect Calumet City citizens. The

[30] 2000 WL 504578 (U.S. Tex.), No. 98-1167, U.S. Sup. Ct., May 1, 2000. According to the City, in that case the Court upheld a county's right to force employees who had accumulated compensatory time off to use it in lieu of overtime cash payments.

City believes the Arbitration Panel should adopt its final offer on this issue in order to enhance its ability to manage the Police Department budget prudently.

Union Position

The Union believes the status quo should be retained on this issue. It notes that in none of the externally comparable communities does management have the right to determine whether police officers will receive compensatory time or overtime pay for overtime hours worked. The Union asserts that compensatory time is sanctioned by the Fair Labor Standards Act, but only where the employee chooses to take it.

The Union also believes the City's reliance on Christensen, et al. V. Harris County, et al is misplaced. In that case, the Union argues, the question was whether a public employer could require police officers, fire fighters and other workers to take off compensatory time without an agreement allowing them to do so. The Christensen decision has no impact in situations like that in Calumet City, the Union asserts, where the negotiated agreement gives employees some say in the matter. The Union also believes that the issue here is distinguished from that considered by the Court in Christensen, because it relates not to using accumulated compensatory time, but to whether officers will be compensated with cash or time off.

The Union argues that since the City's final offer would force employees to accept compensatory time instead of money for overtime hours worked, it violates the Fair Labor Standards Act.

Discussion

There are significant roadblocks to adoption of the City's final offer in these proceedings. First, as the City itself acknowledged, the parties have not engaged in good faith negotiations on this issue. The City believes there was no opportunity to do so, on account of the Union's alleged reluctance to return to the bargaining table. The Union responds by alleging that since the City essentially refused to bargain on the residency issue, it saw no point in attempting to explore voluntary compromise on other issues. The Neutral Chair finds the record insufficient to point the finger one party or the other as the sole reason why exhaustive negotiations apparently did not take place on many of the issues. But the fact remains that it would be inappropriate to change the status quo through interest arbitration on an issue not fully discussed by the parties themselves during contract negotiations. That is the case with regard to the overtime payment issue.

There is also no support among the external comparables for adopting the City's final offer on this issue. Seven out of the twelve permit police officers to determine whether to accept cash or compensatory time for overtime worked. The labor agreements are silent

in two others. And of the remaining three jurisdictions, none permit the employer to dictate what form of compensation officers will receive for their overtime hours.

Neither do the internal comparables bolster the City's position on this issue. Section 10.3 of the firefighters' contract provides that they will be paid for working overtime. Article 3 of the Street & Alley and Water Departments contract contains a similar provision. And Section 4.3 of the clerks' agreement with Teamsters Local 726 provides pay for working overtime. In other words, none of the internal comparables contain a "management decides" provision like the one the City seeks to add to its police contract.

Moreover, adoption of the City's final offer on this issue would create potential problems for grievance arbitrators called upon in the future to interpret Article XIII, §F. The language of the current paragraph provides that compensatory time may be paid in lieu of overtime payment "if the employee agrees." The City's final offer leaves that language unchanged, but adds in a new second paragraph a provision granting to the Department and/or City "the sole discretion" to determine whether police officers will receive compensatory time or pay for overtime worked. That provision conflicts with what is stated in the first paragraph of §F. Which should prevail? The one the parties negotiated themselves? The one an interest arbitration panel adopted? The Neutral Chair believes that the City's offer on this issue would create interpretation problems which might cause future grievances and cost the parties additional and unnecessary grievance arbitration expense.

On the basis of the foregoing analysis, the Arbitration Panel rejects the City's proposal to change the status quo on this issue. Having done so, there is no need to spend additional time discussing its legality.

ARTICLE XV – CALL BACK AND COURT TIME

Current Language

A. Defined

> A "call back" is defined as an official assignment of work which does not continuously precede or follow an officer's regularly scheduled working hours.

B. Compensation

> Employees covered by this Agreement who are called back to work after having left work shall receive a minimum of three (3) hours at the appropriate overtime rate or be compensated for the hours at the appropriate overtime rate or be compensated for the actual time worked, whichever is greater, at the overtime rate, unless the individual is called

back to rectify his/her own error. In the event call back is based upon an error created by the officer's own actions, no call back time shall be allotted. Subject to Article XIII herein, each employee covered by this Agreement will have the option to choose between pay or time due compensation, at the appropriate overtime rate.

C. Court Time

Employees covered by this Agreement, required to attend court outside their regularly scheduled work hours, shall be compensated at the overtime rate with a minimum of three (3) hours.

City Position

The City's final offer on this economic issue would amend Article XV by adding the following language --- apparently to §B:

Officers who are called out, regardless of the number of cases or the number of locations, shall receive not more than three (3) hours of overtime during any twenty-four (24) hour period relative to call out. In the event the officer works more than three (3) hours, the officer shall be paid for the exact number of hours worked by the officer. In the event the officer works less than three (3) hours as a result of call-out or court appearances, under no circumstances shall the officer be paid more than three (3) hours at time and a half.

The City also proposed in its final offer the addition of the following new sections to Article XV:

D. There shall be no pyramiding of benefits in this provision or relative to any other provision in this Agreement.

E. In the event an officer is accused of falsifying a claim for compensation under this contract or falsifying information relating to any benefit under the terms of this contract, including compensatory time claims, he/she shall be subject to discipline up to and including discharge.

In its post hearing brief, the City withdrew the above proposed amendments to Article XV, citing the February 18, 2000 Award Arbitrator George Larney in American Arbitration Association Case No. 51 390 00463 98. The City apparently believes that Arbitrator Larney's Award obviates its need to amend the

Article. No further argument or discussion of this issue was set forth in the City's post hearing brief.

Union Position

The Union proposes to retain the status quo on this issue.

Discussion

Since the City wishes to withdraw its proposal on this issue, leaving Article XV as is, and since the Union's position on the matter is the same, the Arbitration Panel adopts the Union's final offer. In doing so we take no formal position as to the significance of the aforementioned Award from Arbitrator George Larney.

ARTICLE XVIII – RESERVE POLICE OFFICERS

Current Language

A. Duties

Reserve Police Officers shall only be assigned to perform the following duties in the City of Calumet City: to aid or direct traffic within the City; to aid in control of crowds, natural or man-made disasters; to aid in the case of civil disorder; to aid in general police security of all shopping malls and adjacent parking lots within the City of Calumet City; to aid in prisoner transport and pick-up; to aid in lock-up and booking activities; to aid in front desk duties (answering telephones and taking desk and walk-in reports); to aid in supervising community service workers and aid assisting records and telecommunications divisions, general record and other departmental deliveries and errands as requested by management. One (1) Reserve Officer may act as City Hall security and one(1) as personal security to the Mayor of the City.

The duties of Reserve Police Officers shall be in accordance with any and all regulations, grievance awards, rules and regulations, ordinances and with the requirements set forth in the Illinois Compiled Statutes, 50 ILCS 705/8.1 et seq. When any regular full-time police officer is on layoff status, no reserve officer or any other City employee, whether paid or volunteer, will perform any duties of a full-time police officer.

B. Uniforms

> Identification symbols, including badge and patches, worn by such Reserve Police Officers shall be different and distinct from those used by regular full-time officers of the Police Department. The parties acknowledge that the current badges and patches comply with the requirements of this provision.

City Position

The City proposes the deletion of Article XVIII in its entirety. It notes that prior to 1996 the Illinois Statutes (50 ILCS 705/8.1 et seq.) specifically provided for Reserve Police Officers and set forth their duties. In that year, however, the Illinois legislature repealed the act and eliminated the position of Reserve Police Officer. The City therefore asserts that the statutorily created position of Reserve Police Officer no longer exists and that Article XVIII no longer serves any purpose.

Union Position

The Union wishes to retain the status quo on this issue. It argues that Article XVIII was negotiated to protect and preserve bargaining unit work. Moreover, the Union notes, while the Illinois Legislature recently adopted statutory language requiring police training for all who wear a badge and carry a gun, the amendment did not expressly eliminate use of the term "reserve officer."

Discussion

Even if the City is correct in its assertion that there is no longer a need for Article XVIII in the Agreement, there can be no harm in leaving it undisturbed until the parties themselves have an opportunity to discuss its removal or amendment at the bargaining table. On the other hand, if the Union is right in its interpretation of the statutory amendment, some potential for an assault on bargaining unit work may exist. The Neutral Chair believes it would be inappropriate, absent more information about how the amendment is being interpreted and applied elsewhere, to delete the whole of Article XVIII in these proceedings simply because the Agreement would be cleaner without it. With the passage of time, the intent of the statutory amendment will no doubt become more clear, thereby giving the parties themselves sufficient information to discuss the matter at the bargaining table.

ARTICLE XX – OFFICERS' LEAVE

Current Language

The parties' dispute on this issue concerns Article XX, §B, which is quoted here:

B. Sick

Sick leave will be earned at the rate of one (1) day per month for a total of twelve (12) days per year with the following exceptions:

1. In order for a member to be paid for any designated legal holiday, he/she shall not be absent the scheduled workday before the holiday or the scheduled workday after said designated holiday.

2. If a person runs out of sick time, he/she may, under unusual circumstances, request additional time which may be granted by the City Council after investigation and proof that the individual deserves the additional time, not to exceed six (6) months.

3. The Chief of Police or his/her designee will assume the duties and obligations of their rank to prevent abuses of sick leave. The City and the Council will negotiate and agree upon a Sick Abuse (sic) Policy during the term of this Agreement. The parties will make every effort to commence such negotiations within thirty (30) days of the date of execution of this Agreement. Once negotiated, such policy shall be in full force and effect during the term of this Agreement.

4. It will be the responsibility of the Chief of Police or his/her designee to determine the cause of each absence reported to them.

5. Sick leave in excess of three (3) consecutive days will require a written statement by a licensed physician certifying that the member's condition prevented the member from performing the required duties. The Chief may also require a doctor's certification if he/she has a reasonable belief based on articulate fact that the employee is abusing his/her sick leave privileges. Sick leave credits for past service will accumulate at the rate of twelve (12) days per year to a maximum of two hundred forty (240) days.

6. Members will be paid for unused sick leave accrued during their working career at the time of retirement, disability retirement, or honorable termination. If an employee is entitled to Ten Thousand Dollars ($10,000.00) or more for sick leave buy-back at the time of

retirement, the City may, at its option, distribute said money equally over a six (6) consecutive month period.

7. Beginning January 1, 1994, employees hired thereafter shall not receive buy-back for accumulated sick leave.

City Position

The City proposes that the following provision should replace the current §B(3):

> Subject to Article VII of this Agreement, the Chief of Police or his designee will assume the duties and obligations of their rank to prevent abuse of sick leave. The parties acknowledge that a member of the unit who is accused and found guilty of sick leave abuse shall be subject to discipline up to and including discharge. The severity of the discipline shall be in the sole discretion of the Chief of the Department and/or his designee, subject to discipline processes in this Agreement. An attempt to falsify sick leave records or to utilize sick leave under false pretenses shall constitute a dischargeable offense.

The City notes that the current provision requiring the parties to negotiate a "Sick Abuse Policy" during the term of the Agreement was never acted upon because the Union "failed to meet with management to develop a policy in the years the Agreement was in existence."[31] The City believes that the Union does not wish to negotiate a sick leave abuse policy and that, accordingly, §B3 should reflect the current state of affairs on this issue.

Union Position

The Union's final offer retains the status quo with regard to Article XX. It argues that the language proposed by the City would serve no purpose, since the Chief already has the authority to act in the ways it specifies. The Union argued as well that since the City wants the change, it has the burden of proving the need for it. Other than stating that it desires the change, the Union asserts, the City has offered no evidence to demonstrate a compelling need for it.

[31] City's post hearing brief, p. 42.

Discussion

Even without confirmatory Agreement language, the City already has many of the authorities it seeks through its final offer on this issue. For example, (1) the Chief and/or his designee already have the authority to prevent sick leave abuse; (2) any bargaining unit member found guilty of sick leave abuse is already subject to discipline up to and including discharge;[32] (3) the Chief and/or his designee already have the sole discretion to determine the severity of discipline for sick leave abuse, subject to the Union's protest through the grievance procedure. Such discretion is very important, for the circumstances in one instance of sick leave abuse might vary considerably from those in another. Management of the Calumet City Police Department should (and does) have the authority to consider all the circumstances on a case-by-case basis and then make a well-reasoned disciplinary decision based upon such consideration. But while the Neutral Chair agrees with the general thrust of the City's proposal on this issue, its last sentence is troublesome.

The City seeks in the last sentence of its proposal to declare attempts "to falsify sick leave records or to utilize sick leave under false pretenses" dischargeable offenses. Most probably are dischargeable offenses; a few might not rise to that level of severity. Consider, for example, the situation where an officer experiences severe gastrointestinal distress, believes an appendicitis attack is in progress, and so indicates when reporting off sick. The officer realizes an hour or so later that the pain was solely and simply caused by gas, which (to put it as delicately as possible) suddenly dissipated. The officer then reports late for work and explains that he was not suffering from appendicitis after all. Under the language proposed by the City that officer could possibly be terminated for using sick leave "under false pretenses." The Neutral Chair realizes full well that such an eventuality is not highly likely; nevertheless, under the City's proposal it is possible. A global declaration that all attempts to utilize sick leave under false pretenses are dischargeable offenses therefore seems inadvisable. Were the phrase "absent extenuating circumstances" added to the last sentence of the City's proposal on this issue, it would appear more reasonable. Unfortunately, the Arbitration Panel does not have the authority to amend the parties' offers on this economic issue.

It is also clear from the City's justification for its proposal that the parties have not yet spent much time discussing a sick leave abuse policy.[33] At one time, they obviously thought such discussions would prove fruitful, or they would not have agreed to the language currently identified as Article XX, §B(3). The Neutral Chair believes they

[32] The arbitration literature is replete with examples where arbitrators have upheld suspensions and terminations in cases of proven sick leave abuse.

[33] The City essentially asserts it was the Union's fault, noting in its posthearing brief at p. 42 that "The Union failed to meet with management to develop a policy in the years the Agreement was in existence." As alluded to earlier in this Opinion, the Neutral Chair is not inclined to accept such assertions at face value. That is not to say they are made irresponsibly; rather, it simply recognizes the fact that the minds and perceptions of equally reasonable persons differ. In any event, if one party has refused to bargain when it has a legal obligation to do so, the other has the option of initiating unfair labor practice proceedings. When that option has not been exercised, the Neutral Chair generally concludes that any failure to bargain can be attributed to them both.

should attempt once again to initiate that provision by negotiating a sick leave abuse policy on their own. For that reason, and given the fact that Police Department management already has almost all of the authority sought in the City's proposal, the Neutral Chair believes the status quo on this issue should be maintained.

ARTICLE XXI – BONUS DAYS

Current Language

A. Amount

> Each employee covered by this Agreement shall receive four (4) bonus days annually. The employee will be entitled to use said bonus (sic) at his/her discretion, subject to the current sixty percent (60%) minimum manpower requirements set forth by the Employer.

B. Conversion

> Each employee, at the end of the fiscal year, may return any of the unused bonus days in exchange for the prevailing days' wages. The return stipulation shall be one (1) day's wages for each bonus day returned.

C. Termination of Bonus Days

> Bonus days may not be accumulated and must be used during the year in which they are earned.

City Position

The first part of the City's proposal on this issue would give it the discretion to offer officers five days' pay toward tuition reimbursement instead of the four bonus days currently received. That objective and details related to it are contained in the following paragraph, which the City would substitute for the current Article XXI, §A:

> Each employee covered by this Agreement shall be granted four (4) bonus days annually. The employer may, at the employer's discretion, offer to the employee an amount of money equivalent to five (5) days' pay toward tuition reimbursement in lieu of bonus days. The determination of whether tuition is reimbursable is solely within the discretion of the Chief of the Department or his designee. In order to qualify for tuition reimbursement in lieu of bonus days at the higher rate, an employee must commence and complete a course or program of study with a grade of C or

> better in a recognized institution of higher education. Such course of study shall be exclusively related to police work. The determination of "exclusively related to police work" shall be the exclusive jurisdiction of the Chief and/or his designee. Such determination shall not be unreasonable. Such course work may include any course work determined and approved by the Department in advance up to and including course work toward a Bachelor's and/or Master's degree. Such tuition reimbursement shall not include an amount in excess of five (5) days (in lieu of bonus days if so elected) in any calendar year. A member of the bargaining unit may not, if said educational reimbursement is approved, receive the bonus days described herein and tuition reimbursement, but must so elect educational reimbursement or bonus days between January 1 and January 15 of each calendar year. The benefit may not accumulate and must be utilized within the calendar year so selected. Failure to utilize the tuition reimbursement election within the calendar year so selected shall not entitle the member to payment of traditional bonus days as described in this paragraph.

The City's final offer continues with the following language, which it proposes be added to Article XXI as a new §D:

> Officers employed after March 1, 1999 shall not be entitled to the bonus day benefits described herein. Notwithstanding, officers employed after March 1, 1999, upon successful completion of the probationary period and thereafter, may be entitled upon proper application for tuition reimbursement subject to the benefits provided and the tuition reimbursement provisions herein. All tuition reimbursement provisions described in this article shall be subject to usual and customary federal, state and other tax deductions and requirements and may be paid to any payroll period as determined in the sole discretion of the City.

The City believes that there is no reason to reject its tuition reimbursement offer because it merely allows employees to trade their bonus days for tuition reimbursement. It would be used only by those employees who value tuition reimbursement over bonus days. And if no employees opt for tuition reimbursement, the City adds, all current employees would still enjoy bonus days as they have in the past.

The City also notes that in February, 1999 the Union presented a written proposal for tuition reimbursement. Thus, the City argues, its proposal on that issue here is simply a reasonable response to something the Union sought at the bargaining table.

With regard to its proposed §D, the City notes that none of the comparable communities provides bonus days. It therefore feels that limiting the bonus day benefit to those

Calumet City police officers who were on the payroll prior to March 1, 1999 is reasonable.

Union Position

The Union's final offer retains the status quo on this issue. It argues that the City has demonstrated no compelling need to alter the bonus day provision of the Agreement, which was negotiated during arm's length bargaining between the parties themselves.

Discussion

The City's proposal to provide the equivalent of five days' pay in tuition reimbursement appears reasonable on its face. However, the fact remains that it is being advanced to interest arbitration without sufficient prior discussion at the bargaining table. The City received a straightforward proposal from the Union,[34] then without benefit of extended bilateral negotiations it extended a detailed final offer combining educational reimbursement with the bonus day provision the parties negotiated during earlier rounds of bargaining. Moreover, and again without evidence of any discussion with the Union at the bargaining table, the City also proposes in its final offer to create a two-tiered bonus day provision which maintains the benefit for current employees and does not offer it to new employees. Were the Arbitration Panel to accept the City's proposals here, we would essentially be endorsing concepts and language not previously considered by the parties in open negotiations. [35] Doing so would accomplish little in the way of encouraging the parties to settle their disputes voluntarily; on the contrary, it might tacitly endorse circumvention of the bargaining process. That is not the purpose of interest arbitration, which is designed to be a last resort when full and free collective bargaining has not produced voluntary settlement.

The City is correct in its assertion that none of the external communities provide bonus days to their police officers.[36] But that fact is not sufficient to justify the City's proposed elimination of the current bonus day provision for Calumet City police officers employed after May 1, 1999. The City and the FOP negotiated Article XXI against a backdrop of

[34] The Union's written tuition reimbursement proposal stated, simply: "Employees who complete college-accredited classes shall be reimbursed for the cost of tuition provided they receive a passing grade."
[35] Again, the Neutral Chair is unwilling to blame one party or the other for the fact that their negotiations broke down. Suffice it to say that rarely, if ever, is one party wholly responsible for failed collective bargaining talks. Positions are taken for the purpose of leverage. Issues are tied together for strategic reasons. All professional negotiators engage in such tactics and, absent evidence of an illegal refusal to bargain, it would be inappropriate to conclude that their use by one of the parties was the exclusive cause of an impasse.
[36] Police officers in Dolton receive four personal days per year; those in Lansing receive five; the other externally comparable jurisdictions offer one, if any. Police officers in Calumet City also are contractually entitled to one personal day per year.

employment packages enjoyed by police officers in the comparable communities. Thus, by its proposal for a two-tiered bonus day provision the City is attempting to alter a contractual clause negotiated by the parties themselves with full knowledge of local labor market conditions. At that time the parties agreed it was fair to provide all Calumet City police officers with four bonus days annually. Nothing in the interest arbitration record suggests there is now compelling need for a change.

ARTICLE XXIII – VACATIONS

The parties' dispute about this Article relates to vacation scheduling, an issue they also argued under the rubric of Article XI – Seniority. The Neutral Chair has already discussed that issue in an earlier section of this Opinion and Award. There is no need to repeat those comments here.

ARTICLE XXIV – HOLIDAYS

Current Language

Article XXIV presently reads as follows:

A. Listed Holidays

Each employee covered by this Agreement shall be entitled to a day's pay calculated at straight time for each of the following holidays:

New Year's Day	Memorial Day	Veteran's Day
Lincoln's Birthday	Independence Day	Thanksgiving Day
Washington's Birthday	Labor Day	Good Friday
Day After Thanksgiving	Columbus Day	Christmas Day
Martin Luther King's Birthday		

B. Additional Compensation

1. Each employee covered by this Agreement who works on a holiday also receives an additional day off (compensatory time) described as time due.

2. Each employee covered by this Agreement shall be entitled to any additional day declared a holiday by the Employer.

3. All holiday pay due to employees covered by this Agreement shall be included in the base salary of the employees and included in the employee's pension deductions.

C. Exceptions

Time due will not be credited to an employee on a holiday if he/she is on the medical roll (excluding injured on duty), absent due to sickness or death in the family, on military leave, suspended, excused non-disciplinary, or on leave of absence.

D. Qualifications

Employees who are assigned to an eight (8) hour, four (4) day on and two (2) day off schedule will receive the actual holiday for purposes of compensation.

Employees who are assigned to a Monday through Friday schedule will receive the designated holiday for purposes of compensation.

Union Position

The Union proposes that in addition to the benefits set forth in the current Article XXIV, employees who work on a holiday shall be compensated at the time and one-half rate for all hours worked. It acknowledges there is but mixed support among the external comparables. However, the Union argues, its proposal is reasonable considering that now a Calumet City police officer who works on a holiday and one who sits at home watching the game on TV are compensated the same.

City Position

The City's final offer is to retain the status quo on this issue. It argues that Calumet City police officers are already fairly and competitively compensated. The City notes as well that its employees now enjoy thirteen holidays and get paid for them whether they work or not. Employees who work on a holiday get an additional day off. Under the Union's proposal, the City points out, employees who work on a holiday would get double time-and-one-half pay plus an additional day off. The City argues that since none of its other unionized employees enjoy such a provision, it would be inappropriate to award it to its police officers in these proceedings.

The City also points to the external comparables, underscoring the fact that not one of them provides a total holiday package of the magnitude the Union seeks here.

Accordingly, the City believes there is no support for adoption of the Union's final offer on this issue.

Discussion

Table 1 has been constructed to compare the parties' respective final offers against the holiday packages currently in existence across the external comparability pool.

Table 1
Holiday Compensation in Comparable Jurisdictions

Jurisdiction	**No. of Holidays**	**Pay - Worked**	**Pay - Not Worked**	**Pay – Called In**
Alsip	10	2x	2x	2x
Berwyn	13	2.5x	2x	2.5x
Burbank	10	2x	2x	3x
Chicago Heights	10.5	2x	2x	2x
Dolton	10	2x	2x	2x
Evergreen Park	9	2x	2x	2x
Harvey	n/a	n/a	n/a	n/a
Lansing	9	2x	2x	2x
Oak Forest	11	2x	2x	2.5x
Park Forest	12	2.5x	2x	2.5x
South Holland	10	3.5x	2x	3.5x
Tinley Park	10	2x	2x	2x
Calumet City	**13**	**2x**	**2x**	**2x**
Union Final Offer	**13**	**2.5x**	**2x**	**2.5x**

Source: Collective Bargaining Agreements

It is abundantly clear from Table 1 that Calumet City police officers currently enjoy one of the best holiday compensation packages among the comparable communities. Their four bonus days set them even farther ahead of their counterparts across the comparables.[37] The Neutral Chair therefore finds little support among externally comparable municipalities for adoption of the Union's final offer on this issue.

Turning to the internal comparables one also finds insufficient justification for the Union's holiday compensation proposal. Not one of the other represented employee groups in Calumet City enjoys total holiday compensation at the level advanced by the Union in these proceedings.

[37] Police officers in Lansing enjoy five personal days. However, when coupled with their nine holidays, that still puts them far behind Calumet City police officers, who currently receive 13 holidays, 4 bonus days and a personal day annually.

Finally, the Neutral Chair notes that the existing holiday compensation package for Calumet City police officers was negotiated by advocates who were presumably very well informed about the overall compensation provided to police officers across the comparable jurisdictions. Armed with that information they mutually established through collective bargaining the level at which they intended those officers to be compensated for holidays, as compared to the level at which their counterparts in comparable jurisdictions were being paid. There is no evidence in the record before the Neutral Chair to justify altering that ratio through the interest arbitration process.

ARTICLE XXV – WAGE RATES

Current Wage Provision

Article XXV as it currently exists is quoted here:

> Members of the bargaining unit will receive the base salary described below in accordance with length of service.

Rank	As of 5/1/96	As of 5/1/97	As of 5/1/98
Captain	$48,376.87	$50,070.06	$51,822.52
Lieutenant	45,941.01	47,548.95	49,213.16
Sergeant	43,505.83	45,028.54	46,604.53
Patrol (start)	34,727.88	35,943.36	37,201.38
Patrol (1 yr)	38,131.78	39,466.39	40,847.72
Patrol (3 yrs)	41,068.68	42,506.08	43,993.79

Union Position

The Union proposes the following wage increases over the course of a three-year Agreement:[38]

1st Year	3% fully retroactive on all steps to May 1, 1999 on all hours paid
2nd Year	3% effective May 1, 2000
3rd Year	3% effective May 1, 2001

With regard to retroactivity payments, the Union's final offer includes this provision:

[38] The duration issue will be discussed separately in this Opinion and Award.

> Retroactive amounts shall be paid to employees within forty-five days of the issuance of the arbitrator's award. Employees who have separated from the department after May 1, 1999 shall be paid a pro rata share of retroactive pay from May 1, 1999 to the date of separation.

The Union believes its wage offer is appropriate, especially since it exactly parallels the three percent annual increases provided in the City's contract with its firefighters. Moreover, the Union notes, negotiated wage increases for those two units have duplicated each other since at least 1991.

The Union asserts as well that the City's wage proposal (1%, 2%, 3%, 3%) represents a step backward during the first two years, as it would actually reduce police officers' buying power. Furthermore, the Union asserts, the City's wage offer is ambiguous as to whether the second year increase compounds on the first year increase.

The Union recognizes that Calumet City police officers are paid at the top of the external comparables pool. It emphasizes, however, that the City's offer does not appear directed toward redressing the balance among that grouping. If that were the case, the Union argues, the City would have proposed increases which would maintain officers' purchasing power at its current rate, but which would have narrowed the wage gap between Calumet City police and their counterparts in comparable jurisdictions. The Union asserts that the 1% first-year increase proposed by the City does not even meet the cost-of-living increase for 1999, no matter which index is used to estimate it.

City Position

Here is the City's final offer on this issue:

> The City proposes a four-year contract retroactive to May, 1999; year one – 1% increase; year two – 2% increase; years three and four – 3% increase compounded.

The City asserts that under its final offer Calumet City police officers will maintain financial superiority over their counterparts in comparable jurisdictions. It notes as well that their longevity schedule is the highest in the City, and that it was granted to them in exchange for residency. The City also points out that the Union has presented no cost-of-living data to justify its final offer.

Focusing on the internal comparables, the City argues that the increases they received were the product of long, tough bargaining where concessions were made on both sides. Here, the City notes, the Union focused on just one issue --- residency --- and failed to

meet with the City to bargain over the remaining issues. The City believes such behavior should not be rewarded in these proceedings.

Discussion

Negotiations break down for a variety of reasons. When they do, each party typically claims it is entirely the fault of the other. In the present case the City feels the Union left the bargaining table prematurely, because it did not get what it sought on the residency issue. The Union argues that the City was unwilling to bargain seriously on the residency issue, that high-level City officials had attempted to punish certain police officers who did not support the Mayor's latest bid for re-election, and that further negotiations would have been a sham. In two decades of experience as an interest arbitrator, however, the Neutral Chair has come to understand that "it takes two to tango." One party is seldom the sole cause of an impasse, and the record in the present case has not convinced the Neutral Chair that either the City or the Union is the exclusive culprit. Rather, it seems to be a situation where mutual trust between the parties is virtually non-existent. Without that essential element, their collective bargaining relationship is not healthy enough to produce a good faith agreement on much of anything. The volume of issues they have advanced to these proceedings speaks resoundingly to that fact.

Regardless of what really soured the parties about continuing their negotiations, however, the responsibility of the Arbitration Panel remains constant. We are to estimate what the parties themselves would have negotiated, had they engaged in reasonable, good faith negotiations to the point of voluntary settlement.

Turning now to the substance of the wage issue, the Neutral Chair has constructed Table 2 on the following page to determine what internal comparability pattern, if any, the parties themselves have negotiated over the years.

Table 2
Wage Increases (%) - Internal Comparables

Year	Police (FOP)	Fire (IAFF)	Street & Water (Teamsters 142)	Clerks, Etc. (Teamsters 726)
1991	5.0	5.0	n/a	n/a
1992	5.0	5.0	n/a	n/a
1993	2.0	2.0	n/a	n/a
1994	3.75	3.75	n/a	n/a
1995	3.75	3.75	n/a	n/a
1996	3.5	3.5	n/a	n/a
1997	3.5	3.5	n/a	n/a
1998	3.5	3.5	n/a	n/a
1999		3.0	n/a	n/a
City Proposal	1.0			
Union Proposal	3.0			
2000		3.0	3.0	3.5
City Proposal	2.0			
Union Proposal	3.0			
2001		3.0	3.0	4.0
City Proposal	3.0			
Union Proposal	3.0			
2002				
City Proposal	3.0	4.0	4.0	4.0

Source: Contracts; Parties Final Offers.

It is obvious from Table 2 that since at least 1991 the police and fire unions in Calumet City have compared themselves each to the other. In their separate negotiations with the City they have settled on exactly the same wage increases, year after year. A type of wage increase parity has been established between them, and breaking that established relationship in these proceedings would be inadvisable. Indeed, doing so could well set off what has been termed by one labor relations scholar as an "orbit of coercive comparison"[39] whereby the police and fire units in Calumet City might keep trying to "outdo" each other at the bargaining table. Such intense wage competition, characteristic of police/fire bargaining within many municipalities, has a whip-sawing effect on the employer as each unit attempts to get a larger increase than the other obtained. The avoidance of that outcome is very likely why so many municipal employers favor granting the same negotiated increases year-in and year-out to their police and fire units. That is precisely what has taken place in Calumet City for about ten years, and it would not be appropriate to alter that longstanding freely-negotiated pattern in these proceedings.

The Neutral Chair notes as well that for the years 2000 through 2002 the City and its two Teamster-represented groups have agreed to percentage wage increases significantly greater than those proposed by the City here. The increases enjoyed by employees in those groups are even greater in each year than the 3% increase proposed by the Union.

[39] Arthur Ross.

Against that additional backdrop, the Union's final offer once again seems to be the more reasonable.

Review of wages in the externally comparable jurisdictions confirms what both parties have acknowledged: Calumet City police officers have been paid at very high levels vis-a-vis their counterparts in other jurisdictions. In fact, on nearly every cell of the salary schedule they are at the very top. In absolute dollars, both parties' offers for the first year of the contract would retain that distinction. However, adoption of the City's final offer would narrow the dollar difference between police officer wages in Calumet City and those in Tinley Park, the next highest-paying municipality in the comparables pool. That effect can be easily illustrated by comparison of the 1999 percentage wage increases established across the comparable jurisdictions with the parties' final offers here. Table 3 below has been constructed for that purpose. It is clear from the table that both parties' final offers fall below the average negotiated increase for 1999 (3.37%) and for 2000 (3.55%) as well. The average negotiated increase for the year 2001 is not very meaningful, since it is based on settlements in only two jurisdictions (Alsip and Oak Forest). The Neutral Chair also recognizes that a comparison of percentage increases does not capture actual salary relationships among the external comparables, because the actual dollar figures upon which they are based differ from one to the next. Still, unions and municipal employers routinely consider percentage increases achieved in other jurisdictions when wrestling at the bargaining table with the question of what would be a fair increase in their own situation. If the parties in these proceedings had done so at the bargaining table, in a good faith effort to reach a voluntary settlement on the wage issue, it is highly doubtful that they would have embraced a 1% increase for 1999 and a 2% increase for 2000. The Union's 3% per annum proposal seems to be the more reasonable of the two when considered against negotiated settlements across the external comparables.

Table 3
Percentage Wage Increases – External Comparables

Jurisdiction	**1999**	**2000**	**2001**	**2002**
Alsip	4.0	3.8	3.7	n/a
Berwyn	3.5	n/a	n/a	n/a
Burbank	3.25	n/a	n/a	n/a
Chicago Heights	2.0	n/a	n/a	n/a
Dolton	3.8	n/a	n/a	n/a
Evergreen Park	3.0	3.5	n/a	n/a
Harvey	n/a	n/a	n/a	n/a
Lansing	3.5	3.5	n/a	n/a
Oak Forest	3.8 – 4.5	3.8 – 4.1	3.5 – 4.5	n/a
Park Forest	n/a	n/a	n/a	n/a
South Holland	3.0	3.0	n/a	n/a
Tinley Park	3.5	n/a	n/a	n/a
Average	**3.37**	**3.55**	**3.85**	n/a
Calumet City -				
City Offer	1.0	2.0	3.0	3.0
Union Offer	3.0	3.0	3.0	n/a

Source: Contracts; Parties Final Offers.

The City's final offer is also wrought with an ambiguity that could prove troublesome to the parties in the future. It is unclear as to whether the second-year increase is to be compounded onto the result of the first-year increase. Compounding negotiated annual percentage increases each upon the result of its immediate predecessor is the conventional way to compute current wages. The City's final offer specifies such computation for years three and four (i.e., "3% increase compounded), but it does not do so for year two. If the City intended that the second year increase not be compounded on the first, it should have specified that highly unusual intent in its final offer. Without it, the wording of the offer itself is not crystal clear. In any event, if the City did not intend for all of its proposed wage increases to be compounded in the conventional way, it had an obligation to explain why. No such explanation was offered.

Neither party presented cost-of-living data in support of its final offer on the wage issue. But it is common knowledge that the conventional indices thereof are all above 1% for 1999. The City's final offer seems insufficient, then, on that criterion as well. It would reduce Calumet City police officers' purchasing power for 1999 to a level beneath what it was in 1998. There is no justification in the record for doing so.

On balance, the final offer of the Union on the wage issue seems preferable to that of the City. It is adopted.

ARTICLE XXVII – INSURANCE

Current Language

The current Article XXVII is quoted here in its entirety:

> The Union and the City acknowledge that an increase went into effect August 1, 1996, which is currently being paid in part by bargaining unit members. Effective upon execution of this Agreement, at the next regular payroll, any deduction for increased premiums shall be eliminated; however, such reduction shall not be retroactive and it is the intent that no additional contribution for increases shall be required of the members of the bargaining unit during the term of this Agreement.
>
> A. Hospitalization
>
> 1. Effective May 1, 1993, all officers, including past and future retired officers, selecting HMO coverage shall contribute thirty-seven dollars ($37.00) per month for single coverage and forty-nine dollars ($49.00) per month for family coverage toward the cost of the premium.

All officers, including past and future retired officers selecting PPO coverage shall contribute ten percent (10%) of the cost of the premium, whether electing single or family coverage. It is understood for the purpose of this Agreement that ten percent (10%) of the premium will be ten percent (10%) of the premium in effect as of July 31, 1996. Any reduction in premium relative to this provision shall be prospective in nature effective upon execution of this Agreement with the next appropriate payroll (whenever retroactive pay is included in the payroll).

2. Effective August 1, 1989, the parties agree to the following changes regarding insurance:

<u>PPO 3 – BLUE CROSS/BLUE SHIELD</u>

Deductible, Individual	$100.00 per year
Deductible, Family	$300.00 (3 family members must satisfy
Out-of-Pocket	$650.00 additional ($750 including deductible)
Maximum Out-of-Pocket	$2,250.00 per year (3 family member limit)

<u>HMO ILLINOIS</u>

Out-of-Pocket	$10.00 per emergency visit
Mental Health	$20.00 per visit (20/yr)
Prescription Drug	$3.00 co-pay name brand

3. The coverage shall be maintained at the level in effect in August 1, 1990 and will not be modified or reduced.

4. If, during the contract terms, employees are allowed to purchase the hospitalization program at the active group

rate, that same benefit will be extended to retired officers covered by this contract.

B. Dental Plan

The Employer agrees to extend to all employees and their dependents covered by this Agreement the current Dental Plan; the cost of such dental insurance to be borne by the Employer, subject to the provisions of "A."

C. Retirees and Disabled Police Officers

An employee will be eligible to remain with the Employer's health and dental insurance coverage when he or she retires and/or may be placed on disability, regardless of age, and shall be entitled and be required to pay the same contribution as current employees as stated in Article XXVII, Section A herein (except for officers disabled in the line of duty, or on duty, who shall continue to pay the same premium rates as those active employees pay). A surviving spouse and minor children, as defined in the policy, may continue to receive insurance coverage at the City's expense until the surviving spouse remarries or is able to obtain through a then current employer of the surviving spouse equal coverage at the same premium paid by the new employer. The surviving spouse and/or eligible children shall be required to pay the same contribution as current employees as stated in Article XXVII, Section A, herein. Once the spouse reaches Medicare age, the insurance provisions provided herein shall terminate except for any Medicare supplemental provisions that are offered to regular full-time officers who are disabled or retired.

D. Widows and Dependents

All widows and their dependents that were born of or legally adopted by the deceased officer that were also dependents of the deceased officer in terms of the policy will be eligible for the same health and dental insurance coverage as their spouse was entitled to under Article XXVII, Section A, paragraph 1. In the event the widowed spouse of the deceased officer remarries, this provision shall cease to apply. Once the spouse reaches Medicare age, the insurance provisions provided herein shall terminate except for any Medicare supplemental provisions that are offered to regular full-time officers who are disabled or retired.

E. Life

The Employer shall supply each full-time employee covered by the terms of this Agreement with a life insurance policy of Seventy-Five Thousand Dollars ($75,000.00) further increased to One Hundred Fifty Thousand Dollars ($150,000.00) should death occur on-duty. All retirees will be covered by a life insurance policy of Five Thousand Dollars ($5,000.00).

F. Vision Plan

The City shall provide a vision plan for all current full-time officers. The vision plan shall apply to officers only and not members of the officer's family. Such vision plan shall be at the expense of the City. The coverage of the vision plan in terms of what benefits are to be provided shall be in the sole discretion of the City. Glasses and/or contacts that are damaged, lost or destroyed while the officer is on-duty and while engaged in activity which has caused damage to the glasses and/or contacts shall be replaced at the City's expense.

City Position

The City's final offer would rewrite the Insurance article of the Agreement as follows:

Section A. Policy Type and Cost. Health and dental insurance coverage shall be offered and provided under Blue Cross Blue Shield HMO and PPO plans or other providers as determined by the City subject to the following modifications. Such will remain in full force and effect during the course of this Agreement as set forth herein. As of October 1, 1999, employees covered by this Agreement shall contribute to the cost of insurance as follows: HMO Family Plan – Seventy dollars ($70) per month; HMO Single Plan – Fifty dollars ($50) per month; PPO Family and Single Plan – Fifteen percent (15%) of the premium computed by the carrier and paid by the Employer. Employee contributions for HMO and PPO coverage, where required, shall be adjusted annually as close as possible to August 1st of each year of this Agreement or at such time as noticed to the City by the provider. Any increase in insurance premium co-payments herein shall be retroactive to October 1, 1999.

Effective March 1, 2000, the PPO Plan shall be modified to include a "physicians network." In-network coverage shall be at the level of 80% and out-of-network coverage shall be at the level of 70%.

Effective March 1, 2000, the current $3 drug care co-payment shall be increased to $8 for generic, $10 for brand name and $10 for mail order.

Effective March 1, 2000, emergency, medical and accident benefits shall be changed from 100% to 90% for in-network and out-of-network.

Effective March 1, 2000, in-network outpatient surgery and diagnostic tests for both physician and hospital co-insurance levels shall change from 100% to 90% and from 80% to 70% for out-of-network hospital.

Effective August 1, 2000, the deductible for coverages in the PPO Plan shall be increased from $100 to $150 and out-of-pocket maximums from $750 to $900 in-network and $8,750 to $8,900 out-of-network (three per family).

Vision Plan – current language

Section B. Retirees and Disabled Police Officers. An employee will be eligible to remain with the Employer's health and dental insurance coverage when he/she retires or is placed on disability pension, regardless of age. Retirees and disabled employees will contribute to said insurance in accordance with the terms and conditions of this Agreement. All members of the bargaining unit who retired after May 1, 1993, but before the execution of this Agreement, will pay the same contribution as current employees as stated in Section A above until such time as the retired employee reaches Medicare coverage age, at which time the retiree shall be eligible for any then existing supplemental insurance program paid by the City. All members of the bargaining unit who retire after the execution date of this Agreement shall contribute One Hundred Fifteen Dollars ($115.00) per month toward insurance coverage over the contribution made by full-time employees until such time as the retired employee reaches Medicare coverage age, at which time the retiree shall be eligible for any then existing supplemental insurance program paid by the City. Any future increases in the additional monthly contribution to be paid by the retirees for insurance coverage will be subject to renegotiation in the next collective bargaining agreement between the parties. At such time as the employee reaches Medicare coverage age, the employee contribution shall be reduced to fifteen percent (15%) of the premium computed by the carrier and charged the Employer for such supplemental coverage. Disabled employees who are not covered by Social Security disability payment as a result of a spousal relationship shall pay the same contribution as current employees as provided in Section A above. There shall be no change in this section from the previous contract, dated May 1, 1993 to April 30, 1996, for all members of the bargaining unit who retired before May 1, 1993; that is, all members of the bargaining unit who retired

before May 1, 1993 will pay the same contributions as current employees as stated in Section A above.

Section C. Widows and Dependents. All widows and dependents may select HMO benefits, if available at the time of selection, as provided herein without cost. Widows and dependents who elect PPO coverage shall pay the same costs and premiums as provided in Section A above if the deceased police officer was a full-time non-retired employee and as provided in Section B above if the employee was retired and/or disabled. In order to qualify for dependent status, a claimed dependent, if a full-time college student, must not have reached the age of 24 years or, if not a full-time college student, must not have reached the age of 19 years. In addition, a claimed dependent must have received in excess of fifty percent (50%) of all support from the employee, widow and/or disabled employee. A disabled dependent must have been determined disabled by the United States Social Security Administration in order to be covered by the insurance provisions of this Article.

Any retired employee who obtains secondary employment where the annual income over a period of four (4) years is greater than the employee's retirement pension income and whose then employer after four (4) years offers an insurance plan with a premium to be paid that is equal to or less than the premium paid by the City of Calumet City for employee and dependent coverage, said retired employee shall be obligated to utilize the secondary employer's insurance coverage benefit. Nothing contained herein shall deny the employee who obtains such secondary employment from having dual coverage with the exception of any provision of either plan which denies the right to maintain such coverage. In the event either the secondary employer's plan or the City's plan requires an election, the employee shall make such election of either the secondary employer's plan or the City's plan. Such election shall be the exclusive right of the employee. Retired and/or disabled employees and their dependents shall have the same deductible and co-insurance provisions as provided in Section A or Section B above.

Section D. Life Insurance. All current employees will be covered by a life insurance policy of $50,000.00, further increased to $150,000.00 should death occur in the line of duty. All retirees will be covered by a life insurance policy of $10,000.00.

Section E. Dental Plan. Current language.

The City asserts that the Union was never willing to engage in serious insurance negotiations. It further claims that the insurance proposal tendered in the foregoing final offer is "essentially the same proposal, with some fine-tuning on each contract, agreed to

by the City's Local 726 and the Firefighters union."[40] Thus, the City notes, adoption of its final offer on this issue would grant to Calumet City police officers the by-product of its give-and-take negotiations with two other unions.[41]

The City characterizes the Union's final offer on this issue as inappropriate, because none of its terms were seriously negotiated, there have been no concessions made for it, and it contains insurance benefits more advantageous than those negotiated with the IAFF and Teamsters Local 726 groups. The City adds that several Illinois interest arbitrators, including the Neutral Chair in these proceedings, have recognized the need for uniformity of health insurance benefits across internally comparable groups of employees. The City stresses as well that two strong unions representing Calumet City employees have already agreed to the proposal embodied in its final offer to the FOP here.

As further evidence supporting the adoption of its final offer on the insurance issue the City cites the spiraling cost of health insurance. It points to the external comparables as well, noting that the employee contributions contained in its final offer are either lower than or comparable to those paid by police officers in those jurisdictions.

The City also believes there is no support for the Union's claim that it is unlawful to seek increased contributions from retirees. It notes the Union's acknowledgement that the City can charge retirees the full premium, and that the current PPO premium for retirees is $922 per month for family coverage and $338 per month for single coverage. The City claims as well that at present forty-six cents of every dollar it contributes toward insurance is diverted to retiree coverage, and that retiree claims are running 3 ½ times greater than the average claim of active employees.

Union Position

The Union also proposes that the insurance article be amended. Its final offer is quoted here:

> Section A. Policy Type and Cost
>
> Health and dental insurance coverage shall be offered and provided under Blue Cross Blue Shield HMO and PPO plans or other providers as determined by the City subject to the following modifications. Such will remain in full force and effect during the course of this Agreement as set forth herein; provided, however, that the plan or plans adopted by the City shall provide substantially the same benefits and coverages as are currently provided.

[40] City's post hearing brief, p. 55.
[41] Insurance coverage for the other Teamster-represented group is different, as it is provided by the Teamsters' Central States Pension Fund.

> As of October 1, 1999, employees covered by this Agreement shall contribute to the cost of insurance as follows: HMO Family Plan – Seventy Dollars ($70.00) per month; HMO Single Plan – Fifty Dollars ($50.00) per month; PPO Family and Single Plan – fifteen percent (15%) of the premium computed by the carrier and paid by the Employer.
>
> Employee contributions to the PPO plans (i.e. 15%), where required, shall be adjusted annually as close as possible to August 1st of each year of this Agreement or at such time as noticed to the City by the provider. Any increase in insurance premium payments provided herein shall be retroactive to October 1, 1999.
>
> The employer shall provide or cause to be provided to the Union such documents and other information as may be reasonably necessary for the Union and bargaining unit employees to review the costs of the insurance programs and the need for premium increases, if any.

The Union asserts that the City's final offer on this issue does not mirror what it negotiated with the IAFF and Teamsters Local 726. Indeed, the Union claims, adoption of the City's proposal would place Calumet City police officers in a worse position than any other City employee on the insurance issue.

The Union reminds the Arbitration Panel that it is obligated to select the entire final offer of one party or the other on this economic issue. It believes that task is greatly simplified when one considers the second paragraph of Section C in the City's final offer --- a provision the Union argues is designed to force officers out of the City's insurance pool after retirement. The Union claims that the triggering event in the offending paragraph (secondary employment where the annual income over four years is greater than the employee's retirement pension) is not well-defined. Does it mean four years of pay must exceed one year of pension benefits? Four years of secondary income in total must exceed four years of pension benefits? Those and several additional questions are not answered by the City's proposal, argues the Union. In any event, the Union notes that to stay in the City's plan the retiree would have to pay for both the secondary employment coverage and the City's coverage.

The Union believes its own final offer reflects a responsible effort designed to lessen the impact of future insurance cost increases on the City, without ravaging the existing benefit structure or extorting retirees out of the pool. The Union notes in addition that its proposal calls for increased employee contributions retroactive to October, 1999. It adds that the proposal permits the City to change policies and/or providers so long as the resulting coverage and benefits are substantially the same as those presently in effect.

Discussion

The City is quite correct in its assertion that many interest arbitrators, including the Neutral Chair in these proceedings, have endorsed the concept of providing the same benefit package for all employee groups in a given jurisdiction. Doing so prevents the "whipsawing" discussed earlier in this Opinion, protecting the employer from falling victim to what might become overly-aggressive competition among municipal unions as they try to protect their members at least as well as the others protect theirs.

The most often-cited example of competition among unions in a given municipality for benefit dollars is the contest between the fire and police services. What one gets, the other subsequently demands. So-called "me too" clauses often appear, so that one or the other does not get left behind in contract negotiations. Those circumstances underscore the prudence of establishing a common benefit package for both groups.

In the present case, the City claims that its final offer to the FOP on the insurance issue is essentially the same as that it agreed to provide to Calumet City firefighters during the most recent round of bargaining with the IAFF, and closely comparable to the insurance benefits negotiated by Teamsters Local 726. The Neutral Chair has identified several differences of varying significance, and several similarities as well.:

? The City's final offer includes a March 1, 2000 effective date for (1) the establishment of a "physicians network" with specified coverage rates for both in-network and out-of-network physicians. The IAFF contract contains the same provision, but makes it effective two months earlier. The Teamsters 726 Agreement contains exactly the same language as does the City's final offer here.

? The foregoing comments also apply to the drug card co-payment increase. That is, they are the same for the Teamster-represented group, but in the City's final offer to the FOP they become effective two months later than they do for the IAFF unit.

? The City's proposed reduction in "emergency, medical and accident benefits" from 100% to 90% coverage does not appear in the IAFF contract. That document uses different language ("hospital and physician co-insurance levels for all diagnostic and emergency benefits"), which may have a similar meaning, though. Again, the effective dates are two months apart. And again, the City's final offer to the FOP is virtually the same as the language in the Teamsters 726 contract.

? The PPO out-of-pocket maximum increases proposed by the City in these proceedings ($750 to $900 for in-network; $8,750 to $8,900 for out-of-network) are not the same as those negotiated by

the IAFF ($750 to $850 and $8,750 to $8,850, respectively). They are the same as those appearing in the 726 contract, though.

? The vision plan carried over by the City's final offer to the FOP is different from that contained in the 726 contract; the Neutral Chair found no evidence of a vision plan in the IAFF Agreement.

? Significantly, the City's proposed Section B (Retirees and Disabled Police Officers) does not appear at all in the Teamsters 726 contract; it is included in the IAFF pact, but there is a notable difference between those two provisions: police officers who retire after the execution of the FOP contract are required to pay $115 per month toward insurance coverage over the contribution made by full-time police officers; firefighters similarly situated are contractually required to pay but $15 per month over the contribution made by full-time firefighters.

? The City's proposed Section C (Widows and Dependents) does not appear in the Teamsters 726 Agreement; it does in the IAFF contract.

? The life insurance provision included in the City's final offer reduces police officers' death benefit from $75,000 to $50,000 and maintains the death in the line of duty benefit at $150,000. The comparable figures from the IAFF Agreement are $50,000 and $100,000. Perhaps understandably, given the dangerous nature of police and fire suppression work, death benefit levels are significantly lower ($20,000) for the Teamsters 726 unit.

? The City's final offer to the FOP unit retains the current dental plan language. There is no dental plan language in the IAFF or Teamsters 726 contracts.

The overall conclusion generated from the foregoing list is that while the City's final insurance offer in these proceedings is somewhat similar to what it provides the firefighters, it is by no means identical. Nor is it identical or even comparable to the insurance provisions of the Teamsters 726 contract. And insurance coverage in the remaining bargaining unit (Street & Alley and Water Departments) is completely different, as it is provided through the Teamsters Central States Fund.

Turning to the Union's final offer, one can easily see that it, too, does not exactly parallel the IAFF insurance provisions. For example, it does not include (1) the PPO coverage "physicians network" language; (2) the drug card co-payment increase provision; (3) the emergency medical benefit reduction; or (4) PPO out-of-pocket expense increases. And

significantly, the Union's insurance proposal here does not include the sweeping changes to retiree benefits negotiated between the IAFF and the City.

The Union did include in its final offer employee HMO and PPO premium contributions identical to those proposed by the City, which are the same as those it negotiated with the IAFF. But the Union's offer also contains a requirement that insurance plans adopted by the City "shall provide substantially the same benefits and coverages as are currently provided." There is no such provision in the most recently expired FOP contract, nor is there one in the current IAFF Agreement.

The decision of the Arbitration Panel on this issue is an extremely difficult one, since both parties wish to change the status quo and neither has advanced a final offer with provisions identical to those contained in the IAFF contract. Moreover, the IAFF contract contains insurance provisions different from both the Teamsters 726 and Teamsters 142 Agreements. In other words, there is no consistent pattern across the internal comparables.

After much deliberation, the Neutral Chair has concluded that the City's final offer on this issue more closely approximates what reasonable parties might have negotiated than does the Union's final offer. Comparison of the parties' proposals to the recently negotiated IAFF insurance provisions was a particularly influential element of that conclusion. The Neutral Chair notes that the City's offer to the FOP is not quite as "sweet" as what it negotiated with the IAFF unit. But it is certainly more comparable to the IAFF insurance provisions than is the Union's final offer.

Neither party presented exhibits comparing their respective insurance offers to the insurance coverage received by police officers across the external comparables. The Neutral Chair attempted to construct one, but found insufficient data in the relevant collective bargaining agreements to do so. Many of them do not specify deductible or maximum out-of-pocket expense data, for example. Some discuss employee premium contributions, but do not cite exact premium costs. Many do not reveal benefit coverage and/or premium contributions for retirees. Overall, meaningful comparison of the parties' final offers here to the insurance coverage provided in comparable communities was just not possible given the insufficient data in the interest arbitration record.

As revealed by the foregoing analysis, there are significant problems associated with both parties' final offers. The Neutral Chair is therefore reluctant to embrace either of them. Being bound by statute to choose one or the other on this economic issue, however, I hereby adopt the City's final offer.

ARTICLE XXVIII – LIGHT DUTY

Current Language

A. Limits

> If a light duty assignment is available, employees may be assigned to temporary light duty at the request of either the employee or the City. Light duty assignments may not exceed twelve (12) months, unless otherwise agreed to by the City and the employee. If an employee cannot physically return to full duty, the employee may apply for disability pension or use accumulated sick leave. Otherwise, the employee shall be assigned to the job assignment the employee held prior to the disabling condition.

Paragraphs B (Physician), C (Benefits) and D (Assignments) have not been reproduced here, as neither party proposes to change them.

City Position

The City proposes deleting the word "may" in the second sentence of §A and replacing it with the word "shall." It also wishes to add the following sentence: "There shall be no pyramiding of benefits relative to this article."

In support of its final offer the City notes that it is not much different from that proposed by the Union, and that even Union Advocate Tom Sonneborn seemingly acknowledged there should be no pyramiding of benefits.

Union Position

The Union proposes the addition of the following paragraph to Article XXVIII as a new Section E:

> Employees shall receive continuing compensation for injuries incurred in the line of duty pursuant to the Public Employee Disability Act, 5 ILCS 345/0.01 et seq., but shall not simultaneously receive such compensation and line of duty disability benefits pursuant to the Pension Code, 40 ILCS 5/3-114.1 or workers compensation temporary wage benefits for the same injury.

The Union notes that its final offer was made in response to the City's demand for "no pyramiding" language. It asserts that there are only three types of benefits an officer could receive for line-of-duty injuries: (1) public employee disability act benefits; (2) workers compensation temporary total disability benefits; and (3) pension benefits for line-of-duty disabilities. The Union believes its final offer clearly prohibits the receipt by an officer of more than one of those benefits. In contrast, the Union argues, the City's "no pyramiding" language is ambiguous and the need for it was not substantiated with any evidence.

Discussion

The Union is correct in its assertion that the City provided no objective evidence to justify its proposal. Changing the word "may" to "shall" in the second sentence of §A does not seem necessary anyway, for in the context of the entire sentence both mean essentially the same thing. And since the Union's final offer was advanced in response to the City's expressed need to prohibit injured officers from receiving more than one benefit type for the same injury, the Neutral Chair favors its adoption.

ARTICLE XXIX – CLOTHING ALLOWANCE

Current Language

The Clothing Allowance provision in the parties' 1996-1999 Agreement is quoted in its entirety below:

> All employees covered by this Agreement shall receive a yearly clothing allowance in the sum of Five Hundred Fifty Dollars ($550.00) for each member assigned to the patrol division and Six Hundred ($600.00) for each member assigned to the investigation division. This clothing allowance is to be paid in four (4) equal installments every three (3) months.

Union Position

The Union proposes that the annual clothing allowance for Calumet City police personnel be increased to $750 for patrol officers and to $800 for investigators, effective May 1, 1999. It acknowledges that there is mixed support for its proposal across the external comparables, with some paying considerably more and some considerably less. The Union notes, however, that Calumet City patrol officers and investigators are paid less than the average across the comparables ($565 and $635, respectively).

City Position

The City wishes to retain the status quo on this economic issue. It underscores the significant size of the Union's proposed increase (about 30%), and argues that the Union presented no evidence of a corresponding increase to the cost of clothing.

Discussion

Adoption of the Union's final offer on this issue would catapult Calumet City patrol division members from a 7th place ranking to a 2nd place ranking among the twelve comparable jurisdictions. It would lift investigators from 7th place to 3rd place. Since the City and the FOP negotiated the current figures themselves, creating certain rankings among the comparables, the Neutral Chair does not believe those rankings should be changed through the interest arbitration process. Put another way, the Union has provided no compelling reason to do so. Accordingly, the City's final offer on this economic issue is adopted.

ARTICLE XXXI - RESIDENCY

Current Language

Article XXXI of the parties' most recent collective bargaining agreement is quoted in its entirety here:

> All employees covered by this Agreement must become residents of the City of Calumet City prior to completion of their probationary period. All employees must remain a resident of the City during their employment by the City, except that after twenty (20) years of employment, an employee may move outside of the City limits of Calumet City subject to the fact that the employee must retire within two (2) years after changing residency outside of the City limits.

Union Position

The Union's final offer on this non-economic issue is quoted here:

> All employees covered by this Agreement must reside in Illinois within twenty (20) miles of the City of Calumet City, except that after twenty (20) years of employment, an employee may move outside such thirty (30)

> miles (sic) subject to the fact that the employee must retire within two (2) years thereafter.[42]

The Union argues that police officers in nearly all jurisdictions have historically opposed residency requirements for several reasons: (1) the local housing market failed to meet their needs; (2) in the more affluent communities officers simply could not afford decent housing; (3) the exposure of their families to reprisal from those the officers had arrested; and (4) the tendency of their neighbors to call their homes rather than "911," thereby transforming them into de facto police substations.

Furthermore, the Union opines, before residency was added to the scope of interest arbitrators' authority by the Legislature in January, 1998,[43] officials in various Illinois jurisdictions were abusing residency rules to reward their friends and punish their enemies. The Union argues that the Mayor of the City of Calumet City did just that. In its post hearing brief, the Union summarized what it characterized as the "voluminous" record on this issue. That summary is reproduced here:

- When the Mayor campaigned for his first term in office he was aggressively backed by the cops because of his promise to eliminate the residency requirement.

- During his first term of office, Calumet City officers moved out of the city.

- Even though the Mayor, the Chief of Police and other City officials knew full well that officers were living outside of town, no action was taken to enforce the residency "rule" that had been allowed to atrophy.

- As the end of the Mayor's first term approached, the officers approached him to call in their chip on residency --- demanding that he fulfill his first term campaign promise to formally eliminate the residency requirement.

- The Mayor's claim that he was unable to get the City Council to agree to the change in residency rules rung hollow to the officers who believed, and continue to this day to believe, that the City Council members are politically beholden to the Mayor for their seats and will vote as they are told.

[42] The Union's original final offer prescribed a 30-mile residency limit. It was amended by hand to reflect a 20-mile limit, but the subsequent phrase "such thirty (30) miles" was apparently left unchanged --- obviously in error.

[43] That is, for police officers and firefighters in municipalities with a population under 1,000,000.

- ? When the Mayor declined to implement the change, the officers withdrew their political support for (him), some actively campaigning for his opponent.

- ? Those most vocally opposed to the Mayor became the target of an investigation into their residencies, with the city officials reportedly surprised to learn that some employees were living outside the city limits (even though the Chief of Police acknowledged that it was common knowledge for years at City Hall and in the Department that the dormant residency rule was being ignored).

- ? The Mayor won his second term of office, but failed miserably in his quest for state-wide office (even though he held a flashy press conference to disclose he was shocked to learn officers were living in violation of the residency rules).

- ? The City canned the officers, and they sued. The jury found in favor of the officers, and the City settled the case.

The Union understands why the citizens of Calumet City might want their police officers to reside within the City limits, but believes that public safety is not dependent on such residency. Public safety, the Union emphasizes, is provided by trained, on-duty police officers hired to work certain hours. The Union does not believe it is reasonable to expect them to provide public safety services twenty-four hours per day. Indeed, the Union argues, the City does not pay them to do so. It adds that the interests and welfare of the public are best served by professional policing, not by forcing police officers to live in the jurisdictions they serve while on duty.

The Union further argues that the City has absolutely and steadfastly refused to budge on the residency issue, and that the Arbitration Panel should put an end to the parties' long and bitter dispute over it. Also, the Union notes, the current residency requirement is not the outcome of bilateral negotiations. It was established unilaterally by the City and no good-faith bargaining about it has taken place since.

The Union argues as well that the absence of a "quid pro quo" for changing the residency provision in these proceedings should not prevent the Panel from adopting its final offer. In support of that argument the Union cites several offers of exchange it has made to the City, only to be rebuffed. The City has made it clear there is nothing it will accept in exchange for relaxing its residency requirement.

The Union points to what it considers several "precedents" which support adoption of its final offer on the residency issue: (1) City of Nashville and Illinois Fraternal Order of Police Labor Council, S-MA-97-141 (McAlpin, 1999); (2) Village of University Park and IAFF Local 3661, S-MA-99-1123 (Finkin, 1999); (3) Village of South Holland and

Illinois Fraternal Order of Police Labor Council, S-MA-98-120 (Goldstein, 1999); (4) City of Highland Park and Teamsters Local Union 714, S-MA-98-219 (Benn, 1999); (5) Town of Cicero and IAFF Local 717, S-MA-98-230 (Berman, 1999); and (6) City of Kankakee (LeRoy).[44]

In addition, the Union notes, the City did not present evidence about response times or any other operational issue that might justify adopting its final offer on the residency issue. Surely, the Union argues, if the City is permitted to enforce (albeit selectively) such a restrictive and invasive limitation on its police officers' private lives, there must be well-documented and bona fide reasons for doing so. The Union asserts that there is no evidence its final offer would adversely impact the department's operations.

The Union argues as well that it would be inappropriate to create a two-tiered residency rule in Calumet City. Doing so, the Union believes, would adversely impact the delivery of public safety service to Calumet City citizens and accomplish nothing more than passing on to another Arbitration Panel in a subsequent interest arbitration proceeding the question of where police must live.

The Union also notes that in the external comparables where bargaining on this issue has occurred, the results support adoption of its final offer. For that and the reasons outlined above, the Union believes its final offer on the residency issue should be embraced by the Arbitration Panel and incorporated into the next Agreement.

City Position

The City advances the following final offer on the residency issue:

> All members of the bargaining unit are required to establish and maintain a bona fide residence within the City of Calumet City prior to the completion of their probation. This requirement is also subject to all past and present ordinances and any modifications thereto by the City Council of the City of Calumet City. Merely maintaining an address in the City is not sufficient. The employee shall be responsible for providing in writing to the Director of Personnel a current phone number and address consistent with the ordinances of the City of Calumet City and the rules and regulations of the Police Department of the City of Calumet City. In addition, all employees shall remain in full compliance with all ordinances, rules and regulations in existence at the date of this Agreement, any modifications and/or changes in said rules and regulations of the Department or ordinances duly passed by the City Council of the City of Calumet City. Failure to abide by this provision shall be grounds for immediate dismissal.

[44] No union designation, case number or date were provided in the Union's reference to this case.

The City notes that residence ordinances have been in place for its fire and police employees for more than thirty years. It emphasizes as well that all members of the FOP unit were advised of the applicable residency ordinance, and that each candidate for employment is advised of it as well. And interestingly, the City points out, some of the current police force actually transferred to Calumet City from police departments with no residency requirements.

Police Chief Vallis and City Aldermen testified on the City's behalf as to the benefits a residency requirement confers on the Calumet City citizens. Changing it as the Union seeks to do would constitute a "breakthrough," the City argues, noting that interest arbitrators have been loath to do so. Furthermore, the City notes, the Union presented no compelling reason to change the status quo. The City also believes that arguments presented by the Union's attorney during the interest arbitration hearings cannot substitute for credible evidence from those personally involved. No police officer or family member was called as a witness by the Union to substantiate the attorney's claims.

The Arbitration Panel should give no weight to the unattested written statements and uncertified police reports submitted by the Union as support for its claim that the families of Calumet City police officers have been endangered on account of the residency rule. Besides, the City argues, a person who would dare to harass a police officer or his family would most likely not be deterred by the fact that they reside twenty miles away.

The City also argues that the Panel should disregard any documents submitted by the Union but not specifically addressed in the interest arbitration hearings. The City believes it would be prejudiced if the Panel were to consider such documents, because it would not have opportunity to respond to any arguments the Union might raise over them.

Union Attorney Sonneborn admitted that he was not present at any Fire and Police Commission hearings relative to the discharge of several police officers over the residency requirement. He did not attend the federal court hearings related to residency either. Thus, his sworn testimony should be regarded as nothing more than hearsay, the City asserts.

The City also points to a recent interest arbitration award in support of its position on the residency issue, noting that the arbitrator gave considerable weight to the internal comparables in that case. See Village of South Holland and Illinois Fraternal Order of Police, S-MA-98-120 (Goldstein, 1999). Here, the City notes, Teamsters Locals 726 and 142 have both agreed voluntarily to residency language --- the very language proposed by the City in these proceedings. And even more significantly, the City notes, the IAFF has incorporated into the firefighters' contract all rules and regulations of the Fire and Police Commission. Accordingly, the residency requirement is included.

Finally, the City asserts, the external comparables present a "hodgepodge" of information. It points out that all towns which border Calumet City have a residency

requirement of one type or another. On the basis of that and all of the above reasons, the City argues, its final offer on residency should be accepted.

Discussion

It is important to recognize that there really is no negotiated status quo on this issue. The residency requirement was imposed unilaterally by the City, and until January, 1998 it was an issue considered to be a non-mandatory subject of bargaining. Thus, it was only in the most recent round of negotiations (i.e., for the successor to the 1996-1999 Agreement) that the City had a statutory obligation to discuss the Union's desire to amend the residency rule. There is no longstanding record of agreement between the parties requiring Calumet City police officers to live within City limits. The residency requirement was initially imposed unilaterally by the City, and it has been unilaterally administered by the City for nearly all of its 30-year existence. That background falls well short of comprising a longstanding negotiated history which should not be disturbed in interest arbitration proceedings. Accordingly, the Neutral Chair does not view the Union's final offer (or the City's, for that matter) as reflective of a "breakthrough."[45]

It is true that a residency requirement appears in the parties' 1996-1999 collective bargaining agreement. One might reasonably ask: "How did it get there if it wasn't a topic of bargaining?" The answer to that question is twofold. First, during negotiations for that agreement the City had no legal obligation to bargain with the Union over the residency issue. And as the City steadfastly notes, its position on residency has been intractable for decades. It is an issue over which the City has never been willing to compromise. The Neutral Chair therefore finds highly suspect the City's claim that in 1996 negotiations the Union accepted a gain somewhere else and agreed to a residency clause. And second, even if such an "exchange" was made, the Union had no choice. It had no legal right to demand that the City negotiate the residency issue. It knew full well that the City would never relax the residency requirement voluntarily. Under such circumstances if the City offered the Union a concession to place into the agreement the current, unilaterally imposed residency requirement the Union could not at that point change anyway, the Union's acceptance of that offer does not in the view of the Neutral Chair constitute full and fair collective bargaining over the residency issue.

The Neutral Chair recognizes that a police residency requirement has been operational in Calumet City for many, many years. Regardless of its origin, there should be compelling reasons to change it through interest arbitration. The record has convinced me that such reasons exist. First, there is the parties' history of disputes over the issue. To say they have been bitterly fought would be a gross understatement. And it appears as well that

[45] For support of this reasoning, see Village of South Holland and Illinois Fraternal Order of Police Labor Council, S-MA-98-120 (Goldstein, 1999). Although Goldstein ruled for the employer in that case, he did recognize that the status quo on the residency issue had not been negotiated. Thus, he opined, "[t]his is not a case where the 'breakthrough' analysis controls the result, or where the failure of give and take at the table can be found to require maintenance of the 'status quo.'"

the City has been less than fair-minded in the way it has administered the residency ordinance. Evidence of that conclusion is contained in relatively recent jury verdicts against Mayor Jerry Genova and Police Chief George Vallis over what jurists deemed the improper discharge of certain police officers over the residency issue.[46] The jury verdicts included both compensatory and punitive damage awards totaling nearly $4,750,000,00.[47] Overall, the City's imposition and administration of a residency requirement for police officers has cost Calumet City taxpayers a great deal of money. It is therefore reasonable to conclude that purely from a financial standpoint, the public interest has not been well served and some sort of change may be in order.

Second, the Neutral Chair is convinced from the police reports and affidavits the Union submitted that the safety of off duty Calumet City police officers and their families has been compromised on account of the residency requirement.[48] The following excerpts are illustrative:

? From Officer Dante G. Zorzi – I have been employed with the City of Calumet City for the past 13 years. During this time I have worked as a patrol officer, Investigator, and Supervisor. I have realized that there was inherited (sic) risks with the profession I have chosen, but didn't realize the way it would effect my family. The first home I purchased in Calumet City was on Wentworth Ave. Soon after I moved in I realized that this was not a good choice, simply because of my profession. As I would cut grass or wash my car, people would yell as they passed, and make obscene gestures. Several times as I or another Officer would bring someone into the booking area, subjects would say, "I know you. You live on Wentworth." Several times the subjects would tell me what kind of vehicles I owned, what color my wife's hair was and how many children I had at the time. Needless to say as soon as it was financially possible I began to look for a home off the beaten path.

? From Tactical Officer Timothy Murphy[49] - On December 9, 1993 while investigating a robbery, I shot Eric Batenich who is a member of the Gangster Disciple Street Gang. Batenich is an extremely violent and unstable individual and I will forward a copy of his criminal background to you with my Chief's permission. He is currently scheduled for release from Michigan State Penitentiary in the year 2000 where he is serving time for Armed Robbery. His

[46] Case No. 97 C 7765, U.S. District Court for the Northern District of Illinois, Eastern Division.
[47] A subsequent Settlement Agreement, still containing significant financial compensation for the Plaintiffs, was executed on September 30, 1999.
[48] Those documents were also submitted to Mayor Genova and the Calumet City Council as part of the Union's September 2, 1997 presentation concerning the residency requirement.
[49] While Murphy's letter is unsigned, it references very specific incidents, including one on October 6, 1991 involving suspect Timothy W. Embry. The General Case Report associated with that incident lists Officer Murphy as the Reporting Officer and also as a Victim.

early request for release was recently denied for attacking a guard. He acquired that case while fleeing from several cases in Illinois including the Robbery charge I have on him. He and his family reside at 17 Detroit St. which lies at the corner of Detroit and Legion Dr. I live at the corner of Legion and Elizabeth St. only 1 block away. Batenich knows where I live due to the fact that he frequently used to walk past my house, and drink across the street. He on more than one occasion has seen me and my family in the yard doing work or playing. He is having a very rough time of it in prison and certainly blames me for some of his predicament. His cases in Illinois are still pending and he is not looking forward to spending more time in prison.

? Also from Officer Murphy – On October 6, 1991, our Department received a tip from an informant that there was a person in town manufacturing and selling explosives. I was a member of the Tactical Division at that time and met with the suspect Timothy W. Embry several times in an undercover capacity to purchase homemade dynamite sticks. Upon completion of the undercover buys and before we could make arrests, I was informed by the informant that Embry had found out that I was a Police Officer, and he was going to blow up my truck and my home, saying he knew where I lived in town and would definitely be able to find me since I had a rather unique looking truck. I had to take a gun and make it available to my then very pregnant wife, so that she could protect herself and my 2 year old son in case Embry came by. I informed my Supervisor now Chief Vallis, of the threat. Fortunately Embry was arrested, charged and convicted before anything could happen to my home.

? From Juvenile Investigator Al Kosakowski (Police Liaison Officer at T.F. North High School) in a November 18, 1996 General Case Report – Reporting Officer Kosakowski . . . has on several occasions, been greeted in his front yard, at his residence, by groups of 4-8 subjects who are known gang members and students at T.F. North . . . R/O, when exiting his residence with his 6 yr old daughter, to transport her to school, is very often observed by students who are known and admitted gang members, and on occasion, one subject will say, “Hey Koz, you live here, huh!”

The arbitration record contains additional police reports citing specific instances where Calumet City police officers and their families have been threatened or harassed by persons who knew their identities and home addresses. The City’s argument that such reports are not “certified” is not persuasive, since they contain dates, times, and the signatures and names of numerous police officers and supervisors. Indeed, the signature

of current Chief George Vallis appears on some of the reports. If the City had any evidence that the reports were not official, or that they were somehow falsified for these proceedings, surely it would have called it to the attention of the Neutral Chair. Moreover, those police reports are valid business records of the Calumet City Police Department.[50] There is absolutely no evidence to suggest the allegations they contain were falsified. And again, the police reports and affidavits submitted by the Union here are the very same ones submitted to the City Council in 1997.[51] Even though the Union did not discuss each of those documents during the interest arbitration hearings, the City obviously knew the purpose for which they were being submitted and had ample opportunity to respond to them --- either by requesting a continuance of the hearings or by addressing them individually in its post hearing brief. The City exercised neither option.

There is additional evidence of an even stronger nature which supports the Union's claim that the residency requirement compromises the safety of Calumet City police officers' families. In an August 2, 1997 memorandum on Calumet City Police Department letterhead (and under the bold heading **"IMPORTANT"**), Lt. Patrick O'Meara advised "All Personnel" of potential danger to three Calumet City police officers. It is reasonable to conclude from that document that the officers' families faced potential danger as well. The O'Meara memorandum is quoted in its entirety below:

IMPORTANT

August 2, 1997

TO: All Personnel

FROM: Lt. Patrick O'Meara

RE: Threats Against Department Members

Timothy A. Redd MB 20Apr73, 5'11" 175 Blk and Brn (photo attached)

Over the weekend, members of the Tactical Unit developed information from a reliable source that the above listed individual has made numerous threats against three department members. The three officers are, Ofc. Sivak, Devaney and an unknown "uniformed" officer who resides between Webb and MCR in the immediate area of Wentworth Ave. Timothy Redd knows the personal residences of all three of the involved officers.

[50] That statement is not intended to somehow demonstrate that as business records the police reports are not subject to the "hearsay rule" applied in court. Hearsay is admissible in labor arbitration, though it is generally not afforded as much weight as is testimony from persons who actually observed an event.
[51] See footnote no. 40.

> Timothy Redd has enlisted the assistance of three MB subjects (known Gangster Disciples) from the 100th area of Roseland, believed to be the area of 100th and Michigan or State St. Timothy Redd has been looking for several handguns from the street to kill the above officers. As of 01Sept97 he is not yet in possession of the weapons. Timothy Redd has a lengthy Criminal History and is currently residing in Riverdale.
>
> Timothy Redd drives a late 1980's box type white Oldsmobile with "tonka truck type" tires. The three subjects from Chicago are known to drive a late 1980's tan and gold Oldsmobile 88 with Gold rims and having the rear passenger window broken out and replaced with plexiglass. The four subjects are known to frequent the beat one area and specifically 228 155th St.
>
> At this time we believe this threat is legitimate and all officers are reminded to use extra caution in our daily activities. Additionally, please keep an extra eye on the residences of the three involved officers. Please forward to me any contacts with Timothy Redd and the names of any individuals who are known accomplices of him. As additional information becomes available, I will forward it.

The above memorandum underscores the legitimacy of the Union's safety concerns on the residency issue. In it, an experienced police lieutenant concludes that the criminal identified knew where the three officers lived, and intended to kill them. It is patently obvious from the memorandum that the officers' families were in danger as well.

The Neutral Chair is convinced from the foregoing police report excerpts, from the above-quoted memorandum, and from additional documents in the record that requiring Calumet City police officers to reside within the city limits compromises their off-duty safety and that of their families. Indeed, even without such documents it is reasonable to conclude that police officers have valid safety concerns related to their families living near those persons whom they arrest and incarcerate. No fair-minded person could argue otherwise. Of course Calumet City Police Officers arrest non-residents of the City from time to time, but they arrest many Calumet City residents also. Some of those arrested are dangerous, vindictive criminals. It is simply not reasonable to enhance through a residency requirement their opportunity to engage in reprisal against the arresting officers and their families.

The Neutral Chair understands full well the political pressures under which municipal aldermen must function. In the present case, for example, it is clear that some Calumet City citizens endorse the police residency requirement and are not reluctant to express such sentiments to City officials. Of course residents feel safer when police officers live in their neighborhoods. But resolution of this issue should be balanced. It should certainly consider the expressed concerns of Calumet City citizens, but it should also be mindful of the very clear and present safety hazards the residency requirement generates

for Calumet City police officers and their families. After all, police officers' spouses and children are members of the public too. It is in their best interest to be insulated as much as possible from criminal acts of reprisal aimed at off-duty police officers with whom they reside.

The Neutral Chair appreciates the sentiment that citizens might feel safer with police officers living in their neighborhoods. But there is absolutely no evidence in the record to identify a statistical relationship between neighborhood safety and officer residency. On the other hand, there is evidence to support the Union's claim that the existing residency requirement poses a real threat to the safety of off-duty officers and their families.

Moving now to the internal comparables criterion, the Neutral Chair understands that the Clerk's unit (Teamsters Local 726) and the Street/Alley & Water unit (Teamsters Local 142 have voluntarily accepted a residency requirement at the bargaining table. The IAFF has agreed to a contractual residency clause as well. Ordinarily, the Neutral Chair would be unwilling to break such a pattern in interest arbitration. But this issue is different. The City's clerical employees and members of its Street/Alley & Water Departments do not arrest suspected criminals. They do not testify against such persons on a routine basis, as part of their jobs. And Calumet City firefighters are not required as part of their profession to detain citizens, take them to jail, and contribute to their subsequent imprisonment. Obviously, then, such employees are not concerned about whether the criminal element knows what they do for a living and where they live. At least they are no more concerned about that issue than those of us in other occupational categories. In stark contrast to all other Calumet City employees, its police officers and their families are subject to reprisal at any time from persons who have demonstrated no respect for the law and little regard for human life. The Neutral Chair has concluded that the equity favors them here, and that their individual safety should prevail over the perceived need some citizens have expressed to have cops living in their neighborhoods.

Besides, citizens who need immediate police protection might get it more quickly by calling 911 than they would by looking up the telephone number of a nearby off-duty police officer and calling his or her residence. On duty police officers are response ready. They are alert, they are wearing indicia of police status, and they are armed. An off-duty officer could well be asleep, and would most likely not be in uniform, armed, and prepared to engage in professional police activity. It therefore seems reasonable to conclude that citizens should not rely on their police officer neighbors during an emergency situation; rather, they should for their own protection use the system put into place for that purpose --- call 911.

As both parties have noted, the evidence from the external comparables on the residency issue is mixed. Some of the police collective bargaining agreements contain a residency clause; some do not. In this particular instance, though, the Union has demonstrated compelling need to relax the residency requirement somewhat, thereby allowing Calumet City police officers the freedom to protect their families from potential harm. Several of those officers and their families have suffered threats and harassment simply because

they have been forced to live within Calumet City limits, at addresses known to those whom they have arrested. Under such conditions, the continuing risk of violent acts of reprisal toward those officers and their families is a more important consideration than whether or not residency requirements exist in comparable communities.

The Neutral Chair is now and has always been very concerned about upholding the right of police department management to protect and serve the citizens to whom it is ultimately responsible. Had the City presented valid operational arguments here in support of its desire to force police officers to reside within City limits, those arguments would certainly have been considered. They may well have been persuasive. But there is just no conclusive evidence in the record to suggest that adoption of the Union's position on this issue would compromise the Department's ability to meet its legitimate operational objectives.

The parties to these proceedings have been embroiled in disputes over the residency issue for years. Those disputes have traveled across many forums, including the grievance process, the Fire and Police Commission, federal court and now, interest arbitration. Thousands upon thousands of tax dollars and Union dues have been spent on related litigation. Clearly, there is compelling need to bring the parties' longstanding difference of opinion on this issue to a close. There is not even a glimmer of hope that they might to so at the bargaining table. If left unchanged, the status quo may result in injury or even death to Calumet City police officers' families. Both parties have taken the position that some sort of change is necessary, as both wish to amend the language of Article XXXI. On the basis of the foregoing analysis the Neutral Chair agrees that a change in the status quo is appropriate. The Union's final offer on this issue is hereby adopted.

ARTICLE XXXIV – DURATION

Current Language

The parties' most recent collective bargaining agreement became effective May 1, 1996 and remained in full force and effect until April 30, 1999 --- a period of three years.

Union Position

The Union proposes another three-year Agreement, effective May 1, 1999 and remaining in full force and effect until April 30, 2002. It seeks no other change to Article XXXIV. In support of its position on this issue, the Union cites the three-year duration of the parties' three previous collective bargaining agreements and notes that the contracts in all of the external comparables are effective for either two or three years.

City Position

The City's final offer is for a four-year contract, effective May 1, 1999 through April 30, 2003. It asserts that due to certain financial considerations it will be in a better position to assess its finances in the year 2003 than it will in prior years. The City also notes that by extending the Agreement to four years, both parties will save time and money by delaying return to the bargaining table for a year.

The City emphasizes as well that its three other unions have agreed voluntarily to four-year agreements, and that all of them had a history of three-year contracts. Moreover, the City points to the fact that its bargaining relationship with the FOP has been less than perfect, and a four-year Agreement will help move the parties toward stability.

Discussion

The City's "stability" argument makes sense. Given the parties' tumultuous relationship, a longer-term contract might be of some mutual service to them. The internal comparables lend support to the City's final offer on this issue as well. But the Union's final offer on the wage issue has already been adopted. It provides for three wage increases, the last of which would cover the third year of the Agreement. Were the Arbitration Panel to now select the City's final offer on the duration issue, Calumet City police officers would not receive any wage increase for the fourth year. Nothing in the record suggests that the parties would have negotiated such an outcome themselves, had they both assumed reasonable postures and hammered out their differences at the bargaining table. The Neutral Chair is therefore persuaded that the Union's final offer on the duration issue should be adopted.

AWARD

After careful study of the record in its entirety, and in full consideration of the applicable statutory criteria, whether specifically discussed herein or not, the Arbitration Panel has reached the following decisions with regard to what will become the parties May 1, 1999 to April 30, 2002 collective bargaining agreement:

1. Article VII – Employee Rights (non-economic). The following sentence shall be added to Section A: "The parties agree that the foregoing shall not limit employees' "Weingarten" rights to union representation under the Illinois Public Labor Relations Act.

   The Union's final offer with regard to the arbitration of discharges and suspensions of more than five days is adopted. It shall be included as Article VII, Section B2 of the Agreement, replacing the current language of that provision.

   The following language shall replace the language currently included in the Agreement as § B3:

   > The Employer agrees to investigate and conclude investigations of potential disciplinary matters in a reasonable amount of time given the circumstances of the matter under investigation. In the event a disciplinary hearing takes place pursuant to Section A of this Article, the Employer may at its discretion refrain from disciplining affected bargaining unit employees until such time as it has received a transcript thereof.

   The Union's final offer to add a new §B4 to Article VII is rejected.

2. Article IX – Grievance Procedure (economic). The final offer of the Union is adopted, thereby retaining the status quo.

3. Article X – Council Representatives (economic). The final offer of the Union is adopted.

4. Article XI – Seniority (non-economic). Both parties' final offers are rejected. The current language of Article XI, §B shall remain unchanged.

5. Article XIII – Hours and Overtime (economic). The final offer of the Union is adopted, thereby retaining the status quo.

6. Article XV – Call Back and Court Time (economic). The final offer of the Union is adopted, thereby retaining the status quo.

7. Article XVIII – Reserve Officers (non-economic). The final offer of the Union is adopted, thereby retaining the status quo.

8. Article XX – Officers' Leave (economic). The final offer of the Union is adopted, thereby retaining the status quo.

9. Article XXI – Bonus Days (economic). The final offer of the Union is adopted, thereby retaining the status quo.

10. Article XXIII – Vacations (non-economic). The parties' dispute on this issue was over vacation scheduling, a matter which has already been resolved by the Arbitration Panel's decision concerning Article XI – Seniority.

11. Article XXIV – Holidays (economic). The final offer of the City is adopted, thereby retaining the status quo.

12. Article XXV – Wage Rates (economic). The final offer of the Union is adopted.

13. Article XXVII – Insurance (economic). The final offer of the City is adopted.

14. Article XXVIII – Light Duty (economic). The final offer of the Union is adopted.

15. Article XXIX – Clothing Allowance (economic). The final offer of the City is adopted, thereby retaining the status quo.

16. Article XXXI – Residency (economic). The final offer of the Union is adopted.

17. Article XXXIV – Duration (economic). The final offer of the Union is adopted.

18. Matters already agreed to by the parties themselves shall be included in their May 1, 1999 to April 30, 2002 collective bargaining agreement, along with provisions from the predecessor Agreement which remain unchanged.

(see following page for Panelists' signatures)

Signed by me at Chicago, Illinois this 12th day of October, 2000.

Steven Briggs, Neutral Chair

Signed by me at Springfield, Illinois this ____ day of October, 2000.

David Wickster, Union Appointee

Concurring as to Award Items: _____

Dissenting as to Award Items: _____

Signed by me at Chicago, Illinois this ____ day of October, 2000.

Martin P. Marta, Esq., City Appointee

Concurring as to Award Items: _____

Dissenting as to Award Items: _____